

HB

102

<TARGET><BILL>HB 102</BILL><SUBJECT>HB
102</SUBJECT><COMM>HJUD28</COMM></TARGET>

ALASKA STATE LEGISLATURE

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Session:
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REPRESENTATIVE WES KELLER

DISTRICT 14

Sponsor Statement

HB 102 Uniform Probate Code; Trusts, Wills; Disposition of Human Remains

Alaska first modernized its trust and estate legislation in 1997. Since then, the trust and estate planning community continuously makes recommendations to the Legislature for updates and improvements to Alaska's trust and estate laws to ensure that Alaska can continue to provide the best possible planning solutions. Alaska's trust and estate laws have significant impact on our economy, bringing literally millions of dollars to the state and creating jobs within the trust, banking, insurance, and legal fields.

House Bill 102 provides for amendments to statute in the following areas:

- Extends protection for retirement plan assets to the beneficiaries of retirement plans (often the surviving spouse).
- Provides means of representation for minors and incapacitated persons in dealing with settlements of accounts or settlement agreements.
- Amends the 2003 Alaska Principal and Income Act to conform to current IRS regulations.
- Provides rules concerning who may control the disposition of decedents' remains.
- Makes conforming amendments to Alaska's laws regarding insurable interests to align with changes to the Uniform Trust Code.
- Provides that IRA interests can be voluntarily transferred to a family member or trust.
- Makes amendments to Alaska's community property provisions to update and clarify the ownership of community property.
- Shortens the statute of limitations for creditors' claims for transfers into an irrevocable trust.
- Increases protections for L.L.C. and Limited Partnership interests.
- Allows a beneficiary to extend the time funds will be held in a Uniform Transfer to Minors Account.
- Makes Alaska a more attractive place for residents to transfer non-grantor trusts.

Passage of HB 102 will ensure that Alaska remains the premier state in which to establish trusts and estates. I urge your support for this important legislation.

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REPRESENTATIVE WES KELLER DISTRICT 14

House Bill (HB) 102 ver. U Sectional Analysis

Sec. 1. Asset Protection for Inherited Retirement Plans. Alaska Statute 09.38.017(a) protects an individual's interest in a retirement plan from the claims of the individual's creditors. The amendment extends this protection to claims of a beneficiary's creditors (e.g., creditors of an individual's spouse). Arizona, Florida, and Texas have enacted similar provisions.

Sec. 2. Spendthrift trusts are created for the benefit of a person (often unable to control his spending) by giving an independent trustee full authority to make decisions as to how the trust funds may be spent for the beneficiary's benefit. A beneficiary's creditors generally cannot reach the trust's funds, and the funds are not actually under the control of the beneficiary.

Section 2 designates retirement plans exempt from claims under AS 9.38.017 as spend thrift trusts. However, this designation does not apply to retirement plans that fall under AS 34.40.118 (see Sec. 42).

Sec. 3. Definitional changes implementing Section 1 and expands the definition of "retirement plan" to include the Alaska teachers' retirement, judicial retirement, public employees' retirement, and elected public officers' retirement systems.

Sec. 4 through Sec. 5. "Legal and equitable" added to Sec. 4 to clarify that a creditor's exclusive remedy against an interest in a limited liability company is a charging order against the interest and other legal or equitable remedies are not available. This clarification is added to address concerns that a creditor might argue that equitable remedies are available despite the current limit in the statute. Section 5 clarifies that the rights of judgment creditors in Alaska Statute 10.50.380 applies to a limited liability company with one member.

Sec. 6. through Sec. 7. Representation for Settlement Agreements. Alaska Statute 13.06.120 provides that minors, incapacitated persons, and similar persons may be represented by another person who has the same interests in the matter. This type of representation is important in order to simplify and make more efficient proceedings that involve persons who are not legally competent to represent themselves. The existing statute clearly applies to judicial proceedings. However, often it is important to have representation of minors and incapacitated persons with respect to the settlement of accounts of trustees of trusts and with respect to settlement agreements. These amendments clarify that the statute not only applies to court proceedings but also to non-judicial settlement proceedings.

Sec. 8. AS 13.36.072 outlines the duties of a trust's co-trustees. If the trust grants powers to some trustees over other trustees, the subordinate trustees are directed to act in accordance with

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the powers given to the other trustees. Additionally, the subordinate trustees are absolved of any consequences that may arise from the superior trustees.

Sec. 9 through Sec. 11. Alaska Statute 13.36.157 provides a trustee with a method to modify an existing trust, commonly referred to as “decanting”. Alaska enacted its “decanting” statute in 1998 based on a copy of New York’s statute. At the present time, the following states have enacted decanting statutes: Alaska, Arizona, Delaware, Florida, Indiana, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, South Dakota, and Tennessee. In addition, decanting statutes are pending before Illinois, Michigan, and Virginia.

New York recently did a thorough revision of its decanting statute in 2011. The proposed amendment to Alaska’s decanting statute closely tracks the changes made by New York with modifications necessary to accommodate Alaska’s procedural provisions.

The purposes of a decanting statute are to allow a trustee to modify a trust in order to correct errors and to adjust to changed circumstances and laws. The revised draft distinguishes between trustees who have unlimited discretion and those without unlimited discretion. A trustee without unlimited discretion must maintain the same beneficiaries in the new trust and apply the same standard for distributions. The trustee cannot be a settlor or beneficiary of the trust, and has a fiduciary duty to exercise the power of appointment in the best interests of one or more proper objects of the exercise of the power and as a prudent person would exercise the power under prevailing circumstances. A trustee must exercise the power in writing and must give written notice to the settlor, any person having the right to remove or replace the trustee, and any qualified beneficiary. A beneficiary may object to the exercise if it is an abuse of discretion, or fails to comply with the trustee’s duties stated above. Restrictions exist to protect mandatory distribution rights, tax benefits, and to prohibit the trustee from exercising the power to either increase the trustee’s compensation or decrease the trustee’s liability.

Implementation of irrevocable trusts is best accomplished if the law provides reasonable flexibility to adjust to changed circumstances and to correct errors. The reason why so many states have enacted decanting statutes is because of the need for this flexibility. Amending Alaska’s decanting statute to include these revised provisions will benefit Alaskans, many of whom use lifetime or testamentary trusts to implement their estate planning purposes.

Sec. 12 through Sec. 13. If a person puts a life insurance policy into a trust, the trustee’s duties regarding investment of the life insurance policy are limited to AS 13.36.273. This provision only applies if the grantor wants the provisions of AS 13.36.273 to apply to the life insurance policy or the trustee notifies the beneficiaries that these provision will apply.

Sec. 14. Appointment of disinterested third parties is no longer consistent with modern trust practices. Current practice generally involves the appointment of family members as trust protectors. Allowing the appointment of family members further protects the trust’s beneficiary in case the original trustee is not acting in the beneficiary’s best interests.

Sec. 15. If the terms of a trust designate the trustee to follow the direction of a non-trustee advisory, the advisor may be held financially liable to the beneficiary for actions the advisor directs the trustee to take. This amendment adds another layer of protection for the trust’s beneficiary as well as the directed trustee.

Sec. 16 through Sec. 32. Amendments to 2003 Alaska Principal and Income Act. This modern act allows a person creating a new trust, or a trustee of an existing trust, to adopt a “unitrust” approach for determining the income of the trust which may be required to be distributed annually. A unitrust distributes a certain percentage of its assets annually to the current beneficiary. The use of this percentage unitrust approach allows the trustee to invest in order to maximize total return for both income and remainder beneficiaries.

Since 2003, the Internal Revenue Service has issued final regulations with respect to unitrusts. The Alaska Principal and Income Act amendments contained in this bill are designed to update Alaska's provisions to take advantage of these new regulations.

In summary, the most important changes contained in the bill expressly allow a trustee to choose a unitrust rate of three to five percent rather than be limited to the four percent amount presently in the law. The changes provide an explicit definition of income for a trust drafted as a unitrust. Language is added to provide the ordering of distributions among types of income and principal. A smoothing period of up to five years is allowed for determining the assets to be used when applying the unitrust percentage. Also, the new provisions clarify how the unitrust rules will apply to retirement benefits. These new changes will facilitate the use of unitrusts under Alaska law and maximize flexibility to take advantage of federal income tax planning.

Sec. 33 through 35. Amendments to Alaska Uniform Transfers to Minors Act. The Alaska Uniform Transfers to Minors Act allows donors, personal representatives, trustees, and obligors to transfer assets to an account for the benefit of a minor. A custodian is named who may then make distributions for the benefit of the minor. Under existing statutes, the minor is entitled to the property when the minor reaches age 18 years or 21 years, depending on the type of transfer. The statute allows this age of distribution to be extended in certain circumstances to age 25 years.

A number of situations have arisen both in Alaska and in other states where it is undesirable for assets to be distributed later than the of ages 18, 21, or 25 years due to problems the minor may have, including substance abuse problems, immaturity, and the inability to manage assets. Often the minor himself or herself is willing to have the assets remain in a custodial setting, managed by a competent person who will make distributions for the benefit of the minor. The amendments in this bill would allow for the extension to an age greater than that presently specified in the statute, as long as the minor consents to the extension during the six-month period when the minor attains the age when otherwise the assets would be distributed under the statute.

Sec. 36. Decedents Remains. Alaska does not presently have adequate statutory authority with respect to who may control the disposition of a decedent's remains. This has resulted in arguments and disputes among relatives and friends. Businesses involved in this area need protection concerning who is the person entitled to give them directions. This new act resolves the present uncertainty of the law. It provides authority for a person to provide directions and a form for a disposition document. If a person has not provided directions, then a priority list is provided of the persons who may control the disposition of the decedent's remains. Businesses that follow these directions or priority lists are protected from liability.

Sec. 37. AS 21.09.210(m) was originally written to draw large life insurance policies and millions of dollars in potential revenue to Alaska. The language intended for the first \$100,000 of premium to be taxed at 2.7% and everything over the first \$100,000 to be taxed at one-tenth of one percent. However, intent is not being followed when it comes to life insurance policies insuring multiple individuals. Rather than treating the policy as a single unit regardless of the number of individuals insured, the State of Alaska appears to be taking the position that life insurance policies insuring more than one individual will have their entire premium taxed at 2.7%. This interpretation places Alaska at a competitive disadvantage with states like South Dakota who tax life insurance policies based on the original intent of AS 21.09.210(m).

Section 37's amended language brings Alaska's treatment back in line with the more favorable treatment afforded by other states by clarifying that life insurance policies will be treated as a single policy regardless of the number of individuals insured and therefore taxed at 2.7% for the first \$100,000 and one-tenth of one percent for premiums exceeding \$100,000.

Sec. 38. Insurable Interests. For many years, individuals have relied on life insurance in helping to meet their financial, business, and estate planning needs. Often, their needs are best served by having one or more life insurance contracts held in an irrevocable trust, partnership, or limited liability company. In particular, irrevocable life insurance trusts have been widely used throughout the United States to own life insurance policies.

However, a relatively recent federal court case (*Chawla, ex rel Giesinger v. Transamerica Occidental Life Ins. Co.*, 2005 WL 405405 (E.D. Va. 2005)) had the effect of pointing out that while state insurance statutes typically require purchasers of insurance contracts to have an “insurable interest” in the life or body of the insured, the statutory provisions describing who may have an insurable interest did not specifically include trusts and business entities which are commonly used to purchase and own such policies. This case raised sufficient uncertainty about the status of life insurance trusts that in July, 2010, the Uniform Law Commission approved amendments to the Uniform Trust Code to clarify the situation.

Alaska has previously adopted substantial portions of the Uniform Trust Code. The proposed amendment to AS 21.42.020 is based in large part on the recommended amendments to the Uniform Trust Code, and also clarifies that persons with insurable interests may form business entities for the purposes of purchasing, holding, and administering life insurance contracts. Other states, for example Delaware, have already amended their statutes for these reasons, or are considering such amendments.

Sec. 39. Language largely mirrors Section 4 by limiting “legal or equitable” remedies of a creditor against an interest in a limited liability partnership.

Sec. 40. AS 34.40.110 (a) allows a person who in writing transfers property in trust to stipulate that the interest of a beneficiary’s trust may not be voluntarily or involuntarily transferred prior to payment or delivery of the interest to the beneficiary. Should a trust contain a restriction described in (a), a creditor may not satisfy a claim out of the beneficiary’s interest in the trust unless the creditor is a creditor of the settlor and 1) establishes by clear and convincing evidence that the settlor’s transfer of property was intended to defraud the creditor and 2) the trust provides that the settlor may revoke or terminate all or parts of the trust without the consent of a person who has a beneficial interest in the trust. This amendment clarifies that a power to “revoke or terminate” does not include a lifetime powers of appointment or similar measures.

Section 40 also ensures statute reflects the most current IRS code.

Sec. 41. Statute of Limitation for Creditors’ Claims. Many states have decided to enact a shorter period of limitation with respect to creditors’ claims for transfer into an irrevocable trust. These states include Hawaii, Nevada, Ohio, and South Dakota. This amendment puts Alaska in line with these other states by shortening the limitation period to two years. This period is still significantly longer than other limitation periods, for example, the four-month limitation period to file a claim against an estate.

Sec. 42. AS 34.40.113 codifies the common law protection that a creditor of the beneficiary cannot compel distributions from the trust. The amendment does not however prevent a creditor from obtaining relief from a fraudulent transfer under AS 34.40.110.

Transfers of IRA Interests (AS 34.40.118). Lifetime estate planning often occurs by a participant making gifts, sales or other transfers of property during lifetime to family members or trusts for their benefit. For many individuals, one of their most valuable assets is their individual retirement account (IRA). Alaska law (AS 09.38.017) protects IRAs from claims of creditors. This protection could be construed to even prohibit voluntary transfers of the participant’s interest in an IRA, which would prevent lifetime transfers of IRAs for estate planning and other purposes. Although it is important to maintain that creditor protection for IRAs, it would be beneficial to permit voluntary transfers of IRAs. Therefore, this section clarifies that the participant of an IRA may voluntarily transfer his or her IRA during lifetime.

Sec. 43 through Sec. 47. Community Property. In 1998, Alaska enacted an optional community property system. Several amendments have been made to Alaska's act, and this bill proposes further amendments designed to improve the act. Specifically, the amendments accomplish the following:

- a. Add references to a community property trust in appropriate provisions.
- b. Eliminate language stating a confusing statute of limitations and incorporates by reference a new statute of limitations.
- c. Provide clarification that property which spouses agree is community property is owned as community property regardless of the form of title to the property. If title to community property is in a form that provides for survivorship ownership between the spouses then the survivorship ownership is presumed to have been made with the consent of both spouses. If one spouse designates a beneficiary for an interest in property, the designation is only effective for that spouse's one half interest unless the other spouse consents in writing. Various family designations are presumed to have been made with the consent of the other spouse. The testimony of one spouse is sufficient to rebut a presumption.
- d. Enact remedies for improper transfers and limitation periods within which those remedies must be pursued.

Sec. 48. Repealed sections.

Sec. 49. Indirect rule change.

Sec. 50. Applicability

Sec. 51. Requirement for two-thirds majority vote of each house.

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Explanation of Changes Found in CSHB 102 () ver. U

- 1) Corrected a drafting error on pg. 3, line 3 by changing the referenced statute from AS 34.40.113 to AS 34.40.118 (found in Sec. 42 pg. 39, line 29). This change was originally passed as Amendment 1 to the "A" version of HB 102.
- 2) Deleted Sec. 38 found in Version A (pg. 35-36, lines 28-4) based on the wishes of the Labor and Commerce Committee.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 102(), Draft Version "U"

1 Page 1, line 12:

2 Delete "and"

3

4 Page 2, line 2:

5 Delete "Evidence"

6 Insert "Evidence; and providing for an effective date"

7

8 Page 35, following line 27:

9 Insert a new bill section to read:

10 "* Sec. 38. AS 21.09.210(m), as amended by sec. 37 of this Act, is amended to read:

11 (m) The tax imposed under this section for an individual [A SINGLE] life
12 insurance policy [OR FOR A GROUP OR OTHER TYPE OF POLICY THAT
13 INSURES THE LIFE OF ONE OR MORE INDIVIDUALS] shall be computed at the
14 rate of

15 (1) 2.7 percent of policy year premium up to \$100,000; and

16 (2) one-tenth of one percent of policy year premium exceeding
17 \$100,000."

18

19 Renumber the following bill sections accordingly.

20

21 Page 43, line 9:

22 Delete "sec. 42"

23 Insert "sec. 43"

1

2 Page 43, line 13:

3 Delete "sec. 45"

4 Insert "sec. 46"

5

6 Page 43, line 15:

7 Delete "sec. 45"

8 Insert "sec. 46"

9

10 Page 44, line 2:

11 Delete "42"

12 Insert "43"

13

14 Page 44, following line 5:

15 Insert a new bill section to read:

16 **"* Sec. 52.** The uncodified law of the State of Alaska is amended by adding a new section
17 to read:

18 **APPLICABILITY.** AS 21.09.210(m), as amended by sec. 38 of this Act, applies to a
19 policy offered, issued for delivery, or delivered on or after the effective date of
20 AS 21.09.210(m), as amended by sec. 38 of this Act. In this section, "policy" has the meaning
21 given in AS 21.97.900."

22

23 Renumber the following bill section accordingly.

24

25 Page 44, line 8:

26 Delete "sec. 42"

27 Insert "sec. 43"

28

29 Page 44, line 9:

30 Delete "sec. 49(a)"

31 Insert "sec. 50(a)"

1 Page 44, line 11:

2 Delete "sec. 45"

3 Insert "sec. 46"

4 Delete "sec. 49(b)"

5 Insert "sec. 50(b)"

6

7 Page 44, following line 13:

8 Insert a new bill section to read:

9 "* **Sec. 54.** AS 21.09.210(m), as amended by sec. 38 of this Act, and sec. 52 of this Act take
10 effect five years after the effective date of sec. 37 of this Act."

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 102(), Draft Version "U"

1 Page 35, line 22:

2 Delete "**a single**" [AN INDIVIDUAL]"

3 Insert "an individual"

4

5 Page 35, lines 23 - 24:

6 Delete "**or for a group or other type of policy that insures the life of one or more**
7 **individuals**"

8 Insert "**, or for a life insurance policy issued for delivery to a trust that was**
9 **formed under the laws of this state or contains a provision that laws of this state govern**
10 **the validity, construction, and administration of the trust.**"

11

12 Page 44, following line 1:

13 Insert a new subsection to read:

14 "(d) AS 21.09.210(m), as amended by sec. 37 of this Act, applies to a life
15 insurance policy issued for delivery to a trust if the life insurance policy is issued for
16 delivery to a trust on or after the effective date of AS 21.09.210(m), as amended by
17 sec. 37 of this Act."

18

19 Reletter the following subsection accordingly.

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REPRESENTATIVE WES KELLER DISTRICT 14

HB 102 Single Subject Rule

Art II, Section 13. Form of Bills

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

Alaska's Constitution, A Citizen's Guide by Gordon S. Harrison further goes on to read,

"The Alaska Supreme Court has consistently construed the single-subject rule broadly, in deference to the judgment of the legislature on how best to structure individual pieces of legislation."

In (*Short v. State*, 600 P.2d 20, 1979), The court said that complying with the one-subject rule required that matters treated in legislation fall under one general idea and be so connected with or related to each other, either logically or in popular understanding, as parts of, or germane to, one general subject. In (*State v. First National Bank of Anchorage*, 660 P.2d 406, 1982) the Court upheld the constitutionality of a bill dealing with the general subject of "lands" although several sections were otherwise unrelated. In (*Van Brunt v. State*, 646 P.2d 872, Alaska App. 1982), the court found an amendment that changed a driving-while-intoxicated statute to be sufficiently germane to a bill changing liquor laws, since both dealt with "intoxicating liquor". Bonds that financed both flood control and small boat harbor projects were upheld by the Court in (*Gellart v. State*, 522 P.2d 1120, 1974)

In the most recent Supreme Court ruling in (*Croft v. Parnell*, 236 P.3d 369, 2010), the Court affirmed the summary judgment of the superior court on this issue the initiative violated the "single-subject" rule, because the "soft dedication" of funds connecting the two aspects of the initiative was an insufficient link, and because it found no other sufficient connection between the initiative's proposed new oil production tax and the initiative's proposed new "clean

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election” program. The Supreme Court affirmed the superior court’s order of summary judgment.

But we have never addressed the question, raised by the Sponsors in this case, whether creating a revenue source that might fund an otherwise unrelated program suffices to unite the revenue source with the program as a “single subject.”

Sponsors of an initiative challenged the lieutenant governor for denying certification of an initiative for violation of the single subject rule. In this case the court ruled,

In ruling on single-subject challenges, we must balance the rule's purpose against the need for efficiency in the legislative process. If the rule were applied too narrowly, “statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment[s] and their interrelationships.” Our solution has been to construe the single-subject “provision with considerable breadth.” We have consistently articulated the substance of the test to reflect this approach:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

In applying this test, we “disregard mere verbal inaccuracies, resolve doubts in favor of validity,” and strike down challenged proposals only when the violation is “substantial and plain.”

The Court went on to further state in its decision,

In each of the seven cases in which this court has addressed a single-subject challenge, we upheld the challenged bill or initiative by determining that all provisions related to a single general subject, theme, or purpose.

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REPRESENTATIVE WES KELLER DISTRICT 14

HB 102 Contracts Clause Issue

The question has been raised about whether the applicability of certain provisions of the bill to existing retirement accounts, IRAs, trusts, and Uniform Transfers to Minors Accounts might violate the Contracts Clause of the United States Constitution. Analysis indicates that these provisions do not violate that clause.

The Constitution prohibits the states from "impairing" contractual obligations. See U.S. Const. art. 1, § 10, cl. 1. Thus, unless a contractual obligation is impaired, there can be no violation of the Contracts Clause. The proposed legislation with respect to IRAs does not impair or restrict any contract right. To the contrary, it expands the rights of an IRA participant/owner in that it authorizes the assignment of an interest in the plan. Since the owner/participant could, prior to the proposed legislation, freely withdraw all of the money from the plan, enacting legislation that permits an assignment, as well as maintaining the right of withdrawal, cannot be viewed as an impairment. It is instead a permissible expansion of rights that does not constitute an impairment of rights within the meaning of the constitutional provision.

Similarly, the provision in the proposed legislation that would provide expanded creditor protection for an inherited IRA or retirement interest does not effect an impairment of contract rights. The only people whose rights are constrained by this provision are creditors. But a creditor has no contract right to enforce a claim against the IRA or retirement interest. Thus, the legislation does not effect an impairment of contract rights. So, for example, when Congress amended the Bankruptcy Code in 2005 to provide expanded creditor protection for existing IRAs, no concern was raised about its constitutional validity. See section 522 of the Bankruptcy Code. So, too, here, the expansion of creditor protection does not implicate the Contracts Clause.

The ability of a trustee to modify a trust, pursuant to the amendments provided by sections 9 through 11 of the bill, does not raise Contract Clause issues. Many modifications are to administrative provisions. It is well established that changes that are administrative in nature do not implicate the Contract Clause. With respect to dispositive changes, if the existing trust provides for a limited standard, then the standard and beneficiaries cannot be changed. With

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respect to the ability of a trustee to “extend” the duration of a trust, it appears that the authority to invade trust principal by paying to another trust of longer duration is provided by common law. In the 1940 case of *Phipps*, the Supreme Court of Florida held the trustee had such power under common law. It relied on the RESTATEMENT OF PROPERTY. When New York, in 1991, enacted the country’s first “decanting” statute (EPTL 10-6.6), the legislature stated it was declaratory of existing common law. Both Florida and New York have recently substantially amended their “decanting” statutes. Both of these states applied their amendments to existing trusts.

The changes to the Uniform Transfers to Minors Accounts provisions which allow for extension of the custodial period do not impair contract obligations of the minor. These changes allow the minor to compel distributions at the present statutory age (18 years or 21 years, depending on the existing provision), or at the beginning of an already extended period. Only if the minor consents, can the age be extended.

In summary, none of the provisions in the bill which apply to existing retirement accounts, IRAs, trusts, and Uniform Transfers to Minors Accounts violate the Contract Clause of the United States Constitution.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 102(L&C)
Fiscal Note Number: 1
(H) Publish Date: 3/27/13

Identifier: HB102-DOA-DRB-2-22-13
Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
Sponsor: KELLER
Requester: House Labor and Commerce

Department: Department of Administration
Appropriation: Centralized Administrative Services
Allocation: Retirement and Benefits
OMB Component Number: 64

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Jim Puckett, Director	Phone:	(907)465-4471
Division	Division of Retirement and Benefits	Date:	02/11/2013 12:00 AM
Approved By:	Curtis Thayer, Deputy Commissioner	Date:	02/22/13
	Department of Administration		

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 102(L&C)

Analysis

HB 102 has no fiscal or actuarial impact on the state retirement systems or the Division of Retirement and Benefits. Retirement Systems' statutes do not allow any assignment of benefits to creditors, whether they are benefits paid to a member, survivor or beneficiary. This bill extends the protections on retirement plan assets from creditors to beneficiaries or survivors after the funds are disbursed from the plans.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 102(L&C)
 Fiscal Note Number: 2
 (H) Publish Date: 3/27/13

Identifier: HB102-LAW-CIV-02-22-13
 Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
 Sponsor: KELLER
 Requester: (H) Labor & Commerce

Department: Department of Law
 Appropriation: Civil Division
 Allocation: Commercial and Fair Business
 OMB Component Number: 2717

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Loretta Withington, Division Operations Manager
 Division: Administrative Services Division
 Approved By: Michael C. Geraghty, Attorney General
Department of Law

Phone: (907)465-5427
 Date: 02/22/2013 12:00 AM
 Date: 02/22/13

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 102(L&C)

Analysis

HB 102 makes numerous changes to the Uniform Probate Code, the Alaska Principal and Income Act, the Alaska Uniform Prudent Investor Act and the Alaska Uniform Transfers to Minors Act. It also amends the exemptions from execution to include a beneficiary's interest in retirement plans, IRAs and Roth IRAs and clarifies the rights of judgment creditors of members of LLCs and partners of LLPs. These matters are not typically handled by the Department of Law but rather by private attorneys and financial advisors.

We see no fiscal impact to the Department of Law.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 102(L&C)
 Fiscal Note Number: 3
 (H) Publish Date: 3/27/13

Identifier: HB102-DOR-TRS-02-22-13
 Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
 Sponsor: KELLER
 Requester: House Labor Commerce

Department: Department of Revenue
 Appropriation: Taxation and Treasury
 Allocation: Treasury Division
 OMB Component Number: 121

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
 if yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version.

Prepared By: Pamela Leary
 Division: Treasury
 Approved By: Angela Rodell
Deputy Commissioner, DOR

Phone: (907)465-2350
 Date: 02/22/2013 12:00 AM
 Date: 02/22/13

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 102(L&C)

Analysis

This bill clarifies exemptions and rights relating to retirement plans, IRAs and probate assets. No additional costs will be incurred as a result of this bill being enacted.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: CSHB 102(L&C)
Fiscal Note Number: 4
(H) Publish Date: 3/27/13

Identifier: HB102-DCCED-DOI-02-22-13
Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
Sponsor: KELLER
Requester: House Labor and Commerce

Department: Department of Commerce, Community and
Economic Development
Appropriation: Insurance Operations
Allocation: Insurance Operations
OMB Component Number: 354

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues	***		***	***	***	***	***	***
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Bret Kolb, Division Director
Division: Division of Insurance
Approved By: JoEllen Hanrahan, Director
Administrative Services, Division

Phone: (907)269-7900
Date: 02/22/2013 10:30 PM
Date: 02/22/13

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 102(L&C)

Analysis

HB 102 updates the trust and estate laws for the state of Alaska. It extends protection for retirement plan assets to the beneficiaries of retirement plans (often the surviving spouse), provides means of representation for minors and incapacitated persons in dealing with settlements of accounts or settlement agreements, amends the 2003 Alaska Principal and Income Act to conform to current IRS regulations, provides rules concerning who may control the disposition of decedents' remains, makes conforming amendments to Alaska's laws regarding insurable interests to align with changes to the Uniform Trust Code, provides that IRA interests can be voluntarily transferred to a family member or trust, makes amendments to Alaska's community property provisions to update and clarify the ownership of community property, shortens the statute of limitations for creditors' claims for transfers into an irrevocable trust, increases protections for L.L.C. and Limited Partnership interests, and allows a beneficiary to extend the time funds will be held in a Uniform Transfer to Minors Account.

Section 37 of the bill expands the favorable premium tax rate for individual life insurance policies to include group life insurance policies. This would have an effect on the amount of premium tax received by the Division of Insurance on group policies with annual premiums over \$100,000. Currently these group policies would be taxed under AS 21.09.210 (b) at a flat 2.7% premium tax, if amended they would be taxed at 2.7% on only the first \$100,000 of premium and then one-tenth of one percent on premium over \$100,000 in premium.

Data is not available to determine an accurate fiscal impact of this legislation. Although it reduces the tax rate for group life insurance premiums over \$100,000, which could reduce premium taxes collected by the Division, this creates a more favorable tax structure and consequently could increase the number of policies written in Alaska resulting in more premium tax being collected by the Division.

Assuming that the amount of group life insurance premium written in Alaska stays the same as in 2011 and that each insurer's group life insurance business would be taxed subject to the amended language, the maximum amount of premium tax the Division would not collect as a result of the amendment would be \$1.4 mil.

By contrast, it is possible that given the large premium amounts required to qualify for the premium tax rate under AS 21.09.210(m), there might be no reduction in premium tax, as none of the current policies would qualify. If that were the case, the only change to the amount of premium tax collected as a result of this bill would be due to additional policies sold as a result of the more favorable tax structure.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 102
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB102-DCCED-DOI-02-22-13
Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
Sponsor: KELLER
Requester: House Labor and Commerce

Department: Department of Commerce, Community and
Economic Development
Appropriation: Insurance Operations
Allocation: Insurance Operations
OMB Component Number: 354

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues	***		***	***	***	***	***
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Bret Kolb, Division Director	Phone:	(907)269-7900
Division	Division of Insurance	Date:	02/22/2013 10:30 PM
Approved By:	JoEllen Hanrahan, Director	Date:	02/22/13
	Administrative Services, Division		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 102

Analysis

HB 102 updates the trust and estate laws for the state of Alaska. It extends protection for retirement plan assets to the beneficiaries of retirement plans (often the surviving spouse), provides means of representation for minors and incapacitated persons in dealing with settlements of accounts or settlement agreements, amends the 2003 Alaska Principal and Income Act to conform to current IRS regulations, provides rules concerning who may control the disposition of decedents' remains, makes conforming amendments to Alaska's laws regarding insurable interests to align with changes to the Uniform Trust Code, provides that IRA interests can be voluntarily transferred to a family member or trust, makes amendments to Alaska's community property provisions to update and clarify the ownership of community property, shortens the statute of limitations for creditors' claims for transfers into an irrevocable trust, increases protections for L.L.C. and Limited Partnership interests, and allows a beneficiary to extend the time funds will be held in a Uniform Transfer to Minors Account.

Section 37 of the bill expands the favorable premium tax rate for individual life insurance policies to include group life insurance policies. This would have an effect on the amount of premium tax received by the Division of Insurance on group policies with annual premiums over \$100,000. Currently these group policies would be taxed under AS 21.09.210 (b) at a flat 2.7% premium tax, if amended they would be taxed at 2.7% on only the first \$100,000 of premium and then one-tenth of one percent on premium over \$100,000 in premium.

Data is not available to determine an accurate fiscal impact of this legislation. Although it reduces the tax rate for group life insurance premiums over \$100,000, which could reduce premium taxes collected by the Division, this creates a more favorable tax structure and consequently could increase the number of policies written in Alaska resulting in more premium tax being collected by the Division.

Assuming that the amount of group life insurance premium written in Alaska stays the same as in 2011 and that each insurer's group life insurance business would be taxed subject to the amended language, the maximum amount of premium tax the Division would not collect as a result of the amendment would be \$1.4 mil.

By contrast, it is possible that given the large premium amounts required to qualify for the premium tax rate under AS 21.09.210(m), there might be no reduction in premium tax, as none of the current policies would qualify. If that were the case, the only change to the amount of premium tax collected as a result of this bill would be due to additional policies sold as a result of the more favorable tax structure.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 102
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB102-DOR-TRS-02-22-13
Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
Sponsor: KELLER
Requester: House Labor Commerce

Department: Department of Revenue
Appropriation: Taxation and Treasury
Allocation: Treasury Division
OMB Component Number: 121

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version.

Prepared By:	Pamela Leary	Phone:	(907)465-2350
Division	Treasury	Date:	02/22/2013 12:00 AM
Approved By:	Angela Rodell	Date:	02/22/13
	Deputy Commissioner, DOR		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB102

Analysis

This bill clarifies exemptions and rights relating to retirement plans, IRAs and probate assets. No additional costs will be incurred as a result of this bill being enacted.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 102
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB102-LAW-CIV-02-22-13
Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
Sponsor: KELLER
Requester: (H) Labor & Commerce

Department: Department of Law
Appropriation: Civil Division
Allocation: Commercial and Fair Business
OMB Component Number: 2717

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2014 Request	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services Division	Date:	02/22/2013 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	02/22/13
	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 102

Analysis

HB 102 makes numerous changes to the Uniform Probate Code, the Alaska Principal and Income Act, the Alaska Uniform Prudent Investor Act and the Alaska Uniform Transfers to Minors Act. It also amends the exemptions from execution to include a beneficiary's interest in retirement plans, IRAs and Roth IRAs and clarifies the rights of judgment creditors of members of LLCs and partners of LLPs. These matters are not typically handled by the Department of Law but rather by private attorneys and financial advisors.

We see no fiscal impact to the Department of Law.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 102
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB102-DOA-DRB-2-22-13
Title: RETIREMENT PLANS; ROTH IRAS; PROBATE
Sponsor: KELLER
Requester: House Labor and Commerce

Department: Department of Administration
Appropriation: Centralized Administrative Services
Allocation: Retirement and Benefits
OMB Component Number: 64

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Jim Puckett, Director</u>	Phone: <u>(907)465-4471</u>
Division: <u>Division of Retirement and Benefits</u>	Date: <u>02/11/2013 12:00 AM</u>
Approved By: <u>Curtis Thayer, Deputy Commissioner</u>	Date: <u>02/22/13</u>
<u>Department of Administration</u>	

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB 102

Analysis

HB 102 has no fiscal or actuarial impact on the state retirement systems or the Division of Retirement and Benefits. Retirement Systems' statutes do not allow any assignment of benefits to creditors, whether they are benefits paid to a member, survivor or beneficiary. This bill extends the protections on retirement plan assets from creditors to beneficiaries or survivors after the funds are disbursed from the plans.

HOMPESCH & EVANS
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
119 N. CUSHMAN STREET, SUITE 400
FAIRBANKS, ALASKA 99701-2879

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RICHARD W. HOMPESCH II**
SUSAN L. EVANS
MICHAEL J. CAVALIERE**
DEREK R. AVERETT**
**Admitted in Montana

PROFESSIONAL STAFF
BARBARA CORY HOMPESCH
ENROLLED AGENT (IRS)

February 26, 2013

Representative Wes Keller
State House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Support for HB102 Trust Laws in Alaska – Request Competitive Update

Dear Representative Keller,

I am an attorney practicing in Fairbanks, Alaska in the trusts and estates area. We support modernization of our trust laws to keep Alaska competitive and to retain and grow the business that Alaskan's have earned. In the past few years, Alaska has slipped from the premier trust jurisdiction in the nation and now finds itself consistently ranked second or third in the nation. I have reviewed the draft legislation set out in HB 102 and it is reasonable and appropriate to keep Alaska competitive and to once again make Alaska the premier trust jurisdiction.

HB 102 provides increased clarity to Alaska's unique and favorable trust laws. Since the passage of the Alaska Trust Act in 1997, Alaska has become a premier jurisdiction for trust planning. Our distinctive statutes have provided Alaska with increased revenue, job creation and benefits for our residents. More specifically, our firm has experienced an increase in business which has led our firm to employ an additional attorney and staff. Outside of the increased economic activity experienced by our firm, many of our Alaskan clients have used these progressive statutes to engage in beneficial financial planning for themselves and their families.

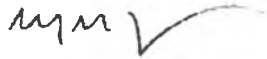
The Alaska Trust Act created such significant planning opportunities that it has attracted some of the wealthiest families in America to use Alaska for a portion of their financial planning, similar to Delaware, Nevada and the Dakotas which have benefited by various laws that attracted business to their states. Alaska laws have heretofore been sufficiently competitive that some 14 other states have now adopted similar legislation, providing Alaska's trust industry with significantly increased competition. With your support and eventual passage HB 102 the Alaska legislature will help to ensure that Alaska remains at the forefront of trust planning and retains its status as a premier state to serve trust customers locally and nationally.

Accordingly, I hereby thank you for your support and submit this letter as evidence of finance industry support for this legislation.

February 26, 2013
Page 2

Sincerely,

HOMPESCH & EVANS
A Professional Corporation



Michael J. Cavaliere

MJC



ALASKA TRUST COMPANY
Complete Trust and Investment SolutionsSM

March 15, 2013

Representative Wes Keller
State House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Dear Representative Keller,

On behalf of Alaska Trust Company, we would like to emphasize the importance of HB 102.

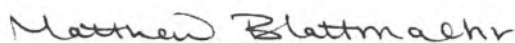
This bill updates and provides increased clarity to Alaska's unique and favorable trust laws. Since the passage of the Alaska Trust Act in 1997, Alaska has become a premier jurisdiction for trust planning. Our distinctive statutes have made Alaska a top destination for trust business and have provided Alaska with increased revenue, job creation and great benefits for our residents.

More specifically, due to the asset requirement for Alaska trusts, local banks have received tens of millions of dollars in additional deposits. Due to Alaska's favorable life insurance premium tax structure and the benefits of holding life insurance inside of a trust, the State has received millions of dollars in insurance premium tax revenue. The funds placed in local banks has allowed for increased lending and economic activity, the increased insurance premium tax revenue has benefited the State, the administration of these trusts has created hundreds of jobs and tens of thousands of Alaskans have used these progressive statutes to engage in advantageous financial planning. Additionally, these laws have cost the state of Alaska nothing.

The Alaska Trust Act created such significant planning opportunities that it has attracted families from all across America to use Alaska for a portion of their financial planning. In fact, these laws are so differentiating that approximately 14 other states have now adopted similar legislation, providing Alaska's trust industry with significantly increased competition. With your support, HB 102 will help to ensure that Alaska remains at the forefront of trust planning and retains its status as a premier trust situs.

With this, we would like to voice our strong support for the ratification of House Bill 102.

Sincerely,



Matthew D. Blattmachr
Vice President and Trust Officer

AlaskaUSA Trust Company

February 22, 2013

Representative Wes Keller
State Capitol, Room 118
Juneau, AK 99801

Re: HB 102

Dear Representative Keller:

The purpose of this letter is to express Alaska USA Trust Company's full support of the passage of HB 102, Uniform Probate Codes: Trusts, Wills, Disposition of Human Remains.

Alaska USA Trust Company serves as the trustee for numerous Alaskans and has experience with the issues which the Bill addresses. We believe HB 102 adds language to Alaska's trust law to reflect changing needs, clarifies ambiguities in current law, and will directly benefit Alaskans in all stages of life, from minor children to widowed spouses.

We also serve as the trustee for a number of trusts established by non-residents. Alaska is currently one of the top trust jurisdictions in the country and passage of HB 102 is critical to maintaining this standing. Over the years, we have seen steady growth in trust accounts from the Lower 48 due to Alaska's trust laws as well as Alaska's favorable tax environment for this type of business. Servicing these trusts provides additional revenue for Alaska's economy and keeps Alaska's name in the forefront as a leader in the estate and tax planning communities.

We strongly support HB 102 and urge its passage.

Thank you.

Sincerely,



Glenn Cipriano
President



Northrim Bank

February 19, 2013

Representative Wes Keller
State House of Representatives
State Capitol, Room 118
Juneau, Alaska 99801-1182

Support for HB102 Trust Laws in Alaska – Request Competitive Update

Dear Representative Keller,

While Northrim Bank has not applied for trust powers and does not have ownership in a trust company that utilizes the benefits of Alaska trust laws, we support modernization of our trust laws to keep Alaska competitive and to retain and grow the business that Alaskan's have earned.

Northrim does enjoy meaningful depository relationships originating from local as well as national trusts that utilize Alaska's competitive advantages that have diminished as other States have modernized their trust laws. To acquaint myself with this issue I have reviewed the draft legislation, spoken with other Alaska banks and trust companies and visited with American Bankers Association representatives familiar with such matters. This homework gives me confidence that HB102 is reasonable and appropriate to keep Alaska competitive.

This bill provides increased clarity to Alaska's unique and favorable trust laws. Since the passage of the Alaska Trust Act in 1997, Alaska has become a premier jurisdiction for trust planning. Our distinctive statutes have provided Alaska with increased revenue, job creation and benefits for our residents. More specifically, Northrim Bank has benefited with very material deposits which have allowed us to increase our lending to Alaskans and their businesses. Outside of the increased economic activity generated by our lending, many Alaskans have used these progressive statutes to engage in beneficial financial planning.

The Alaska Trust Act created such significant planning opportunities that it has attracted some of the wealthiest families in America to use Alaska for a portion of their financial planning; not unlike Delaware or the Dakotas that have benefited by various laws that attracted business to their states. Alaska laws have heretofore been sufficiently competitive that some 14 other states have now adopted similar legislation, providing Alaska's trust industry with significantly increased competition. With your support and eventual passage HB 102, the Alaska legislature will help to ensure that Alaska remains at the forefront of trust planning and retains its status as a premier state to serve trust customers locally and nationally.

Accordingly, I hereby thank you for your support and submit this letter as evidence of finance industry support for this legislation.

Sincerely,

Joseph Beedle, President & CEO – Northrim Bank

P.O. Box 241489
Anchorage, Alaska 99524-1489
Phone: (907) 562-0062 · (800) 478-2265

northrim.com
Member FDIC · Equal Housing Lender



Senior Bank Administration
MAC K3212-051
P.O. Box 196127
Anchorage, AK 99519

Wells Fargo Bank, N.A.

March 1, 2013

Representative Keller
State Capitol
Room 118
Juneau, AK 99801

RE: HB-102 Retirement Plans; Roth IRAs; Probate

Dear Representative Keller:

Wells Fargo is writing to support Alaska House Bill 102.

This bill makes a number of important changes in trusts and estate law, changes that are helpful to individuals, private professionals, and corporate fiduciaries. It adds much desired flexibility to the law by allowing trustees to make certain decisions in administering a total return or unitrust without court involvement.

Many states already have made the changes proposed by this bill. These changes improve the trustee's ability to administer these types of trusts in small but important ways. The bill also provides liability protection to trustees when trustees are being directed by other fiduciaries under the terms of the trust. A number of the popular dynasty trust jurisdictions, such as South Dakota and Delaware, already provide liability protection for so-called "excluded fiduciaries". Corporate fiduciaries view this liability protection as an important factor in determining where these types of trusts should be administered.

This bill also updates and modernizes the decanting statute, a relatively recent and popular statutory development which is being introduced in a number of states. Decanting statutes are viewed by many attorneys as an important tool to be used to correct errors and make modifications to irrevocable trusts under certain circumstances.

In sum, the bill will allow trustees to administer Alaska trusts within sensible but flexible parameters and with protection from liability when appropriate.

Thank you for the opportunity to provide comment on HB-102.

Sincerely,

A handwritten signature in dark ink, appearing to be "JE", written over a light blue horizontal line.

Joseph Everhart
Regional President
Wells Fargo Bank, N.A.
Anchorage, AK

Alaska Bankers Association

P.O. Box 241489 • Anchorage, Alaska 99524-1489 • T: 907-261-3525 • F: 907-562-1758

March 1, 2013

Representative Keller
State Capitol
Room 118
Juneau, AK 99801

RE: HB-102 Retirement Plans; Roth IRAs; Probate

Dear Representative Keller:

The Alaska Bankers Association consists of the following eight member banks: Alaska Pacific Bank, Denali State Bank, First Bank Ketchikan, First National Bank Alaska, KeyBank, Mt. McKinley Bank, Northrim Bank, and Wells Fargo Bank.

The Alaska Bankers Association supports Alaska House Bill 102.

This bill makes a number of updates to trust and estate law in the state of Alaska which are important for us to continue to meet the needs of our customers. Thank you for your work in helping to advance this piece of legislation.

Sincerely,



Joseph C. Everhart
President
Alaska Bankers Association

Chapter 4

TRUSTS

Like a will, a trust is a very useful instrument in the estate-planning arsenal. Estates can be as diverse as people, and the flexibility of a trust makes it useful for many different needs. A trust can do a number of things a will can't do as well, including

- manage assets efficiently if you should die and your beneficiaries are minor children or others not up to the responsibility of handling the estate;
- protect your privacy (unlike a will, a trust is confidential);
- depending on how it is written, and on state law, a trust can protect your assets by reducing taxes;
- if it is a living trust, the trustee can manage property for you while you're alive, providing a way to care for you if you should become disabled. A living trust also avoids probate, lowers estate administration costs, and speeds transfer of your assets to beneficiaries after your death.

Should you have a trust? It depends on the size of your estate and the purpose of the trust. For example, if you mainly want a living trust to protect assets from taxes and probate, but your estate is under the current federal tax floor and small enough to qualify for quick and inexpensive probate in your state, some lawyers would tell you it isn't worth the cost. If, however, you want to avoid a court hearing if you become incompetent or unable to provide for yourself or you want to provide for grandchildren, minor children, or relatives with a disability that makes it difficult for them to manage money, a trust has many advantages.

This chapter discusses general principles of trusts and their common uses (to learn about

amending or revoking a trust, see chapter nine, Changing Your Mind). It should help you determine if one is suitable for you. The next chapter covers the most popular trust--the revocable living trust.

WHAT IS A TRUST?

A trust is a legal relationship in which one person (or qualified trust company) (**trustee**) holds property for the benefit of another (**beneficiary**). The property can be any kind of real or personal property--money, real estate, stocks, bonds, collections, business interests, personal possessions and automobiles. It is often established by one person for the benefit himself or of another. In those cases, it generally involves at least three people: the **grantor** (the person who creates the trust, also known as the **settlor** or **donor**), the **trustee** (who holds and manages the property for the benefit of the grantor and others), and one or more **beneficiaries** (who are entitled to the benefits).

It may be helpful to think of a trust as a contract between the grantor and the trustee. The grantor makes certain property available to the trustee, for certain purposes. The trustee (who often receives a fee) agrees to manage the property in the way specified.

Putting property in trust transfers it from your personal ownership to the trustee who holds the property for you. The trustee has **legal title** to the trust property. For most purposes, the law looks at these assets as if they were now owned by the trustee. For example, many trusts have separate taxpayer identification numbers. But trustees are not the full owners of the property. Trustees have a legal duty to use the property as provided in the trust agreement and permitted by law. The beneficiaries retain what is known as **equitable title**, the right to benefit from the property as specified in the trust.

The donor may retain control of the property. If you set up a revocable living trust with yourself as trustee, you retain the rights of ownership you'd have if the assets were still in your name. You can buy

anything and add it to the trust, sell anything out of the trust, and give trust property to whomever you wish.

If you set up the trust by your will to take effect at your death--a **testamentary trust**--you retain the title to the property during your lifetime, and on your death it passes to the trustee to be distributed to your beneficiaries as you designate.

We speak of putting assets "in" a trust, but they don't actually change location. Think of a trust instead as an imaginary container. It's not a geographical place that protects your car, but a form of ownership that holds it for your benefit. On your car title, the owner blank would simply read "the Richard Petty trust." It's common to put whole bank and brokerage accounts, as well as homes and other real estate, into a trust.

After your trust comes into being, your assets will probably still be in the same place they were before you set it up--the car in the garage, the money in the bank, the land where it always was--but it will have a different owner: the Richard Petty trust, not Richard Petty.

This may sound abstract, but as this and the next chapter show, the benefits are concrete.

HOW DO TRUSTS OPERATE?

There is no such thing as a standard trust, just as there's no standard will. You can include any provision you want, as long as it doesn't conflict with state law. The provisions of a written trust instrument govern how the trustee holds and manages the property. That varies greatly depending on why the trust was set up in the first place.

In a living trust, the grantor may be the trustee and the beneficiary. In trusts set up in your will, the trustee is often one or more persons or, for larger estates where investment expertise is required, a corporate trust company or bank.

Trusts can be revocable (that is, you can legally change the terms and end the trust) or irrevocable. Later chapters, particularly chapter five, discuss the practical effects of each. Here it's enough to say that a revocable trust gives the donor great flexibility but no tax advantages. If the trust is revocable and you are the trustee, you will have to report the income from the trust on your personal income tax return, instead of on a separate income tax statement for the trust. The theory is that by retaining the right to terminate the trust, you have kept enough control of the property in it to treat it for tax purposes as if you owned it in your name.

Irrevocable trusts are the other side of the coin--far less flexibility but possible tax benefits. The trustee must file a separate tax return.

Trusts can be very simple, intended for limited purposes, or they can be quite complex, spanning two or more generations, providing tax benefits and protection from creditors of the beneficiary, and displacing a will as the primary estate planning vehicle.

WHO NEEDS A TRUST?

Parents with young children

If you have young children, want to assure a good education for them, and will have enough assets to do so after death (including life insurance proceeds), you should consider setting up a trust. The trustee manages the property in the trust for the benefit of your children during their lifetime or until they reach the ages that you designate. Then any remaining property in the trust may be divided among the children. This type of arrangement has an obvious advantage over an inflexible division of property among children of different ages without regard to their respective ages or needs. Trusts are more flexible than giving outright gifts to minors in your will (which requires a guardian) or a gift under the Uniform Transfer to Minors Act,

which requires appointment of a custodian and transfers of property to the child at age 18. Issues to consider when setting up a trust for the benefit of your children:

- **One trust or many?** Most people will set up one trust that all the children can draw on, until they've completed their educations (or reached an age by which they should have done so). Then the remaining principal is divided among them equally. This permits the trustee greater flexibility to distribute ("sprinkle") the money unequally according to need; for example, one child may choose to pursue an advanced degree at an expensive private university, while another may drop out of community college after a semester. Obviously, they will have different educational expenses.

Where very young children are involved, it's especially important to build in some flexibility; who knows if a two-year-old may turn out to need special counseling or education by the time he turns five or six?

There are two philosophies about what to do if there's a disparity in ages among the children. One theory is that the older children have already received the benefit of the parents' spending before they died, so the trustee should have authority to make unequal distributions in favor of the younger children to compensate. The other camp, by contrast, thinks it better to establish separate trusts, so that the older children don't have to wait until they're well into adulthood before the trust assets are distributed (which usually happens when the youngest child reaches majority age). You'll have to decide which course is best for your family's circumstances.

Generally speaking, the less money you have to distribute, the more likely you would put it all in one trust. Since there is a limited amount of money, you want to pool it to be sure that it goes for the greatest need. On the other hand, if equality is your primary consideration and there's plenty of money available to take care of each child's likely needs, then you may want to set up separate trusts for each

child, to assure that each gets an equal share.

- **What should the assets be used for?** You can specify that the trust pay for education, health care, food, rent, and other basic support. Given life's unpredictability, however, it's often better to write a vague standard (e.g., "for the support of my children") into the document and allow the trustee the discretion to decide if an expenditure is legitimate. Such a provision also gives the trustee flexibility. For example, if one of your children has an unanticipated expenditure, like a serious illness, the trustee could give him more money that year than the other children.
- **When should the assets be distributed?** Some parents pick the age of majority (18) or the age when a child will be out of college (22 or so). If all the assets are in one trust that serves several children, you would usually have the assets distributed when the youngest child reaches the target age. If you have separate trusts and a pretty good idea about each child's level of maturity, you can pick the age that seems appropriate for each one to receive his or her windfall.

If you don't know when each child will be capable of handling money, you can leave the age of distribution up to the trustee (and risk friction between the trustee and the children), have the trustee distribute the assets at different times (say, half when the first child turns 25 and the rest when the youngest does so), or just pick an age for each child, such as 30.

Like any trust, a children's trust costs money to set up: lawyers' fees for creating the trust, fees for preparing and filing the separate tax returns required, and so on. For families of limited assets, it might be best to give the money via a custodial account under the Uniform Gift to Minors Act or the Uniform Transfers to Minors Act. (See chapter six.)

People with beneficiaries who need help

Trusts are especially popular among people with beneficiaries who aren't able to manage property well. This includes elderly beneficiaries with special needs or a relative who may be untrustworthy with money. For example, if you have a granddaughter who has been in a juvenile detention center, it may be a good idea to require her to obtain the money at intervals from a trustee instead of giving her a gift outright in your will. A **discretionary trust** gives the trustee leeway to give the beneficiary as much or as little he or she thinks appropriate.

Another type of trust is for improvident beneficiaries a **spendthrift trust**. It's simply a trust in which your instructions to the trustee carefully control how much money is released from the trust and at what intervals, so you can keep an irresponsible beneficiary from the temptation of getting thousands of dollars in one stroke. You can stipulate that the trustee will pay only certain expenses for the beneficiary—those you (or the trustee) consider legitimate, such as rent and utility bills. In a spendthrift trust the beneficiary cannot assign his or her interest in the trust, and creditors of the beneficiary can't get at the principal in a trust, but can make a claim (if it's otherwise legal) on whatever income the beneficiary receives. Spendthrift provisions raise a number of tricky questions and should be used cautiously—your lawyer can tell you whether such a trust is right for your situation.

People who own property that is hard to divide

Trusts help you transfer property that's not easy to divide evenly among several beneficiaries. Suppose you have a little vacation cottage on the Cape, and four children who each want to use it. You can pass it to them in a trust that sets out each child's right to use the property, establishes procedures to prevent conflicts, requires that when the property is sold the trustee divide the proceeds evenly (or unevenly, if some children aren't as well off as others), and sets up a procedure by which any child may buy out another's interest in the cottage.

People who want to control their property because of family dynamics

Through a trust, you can maintain more control over a gift than you can through a will. Some people use trusts to pass money to a relative when they have doubts about that person's spouse. For example, you love your son, but don't trust his wife, Livia. You're afraid she'll spend the money you give him on astrologers and shoes. Leave the money in trust for your son instead of making a direct gift to him, and you can direct that he get only the income, so neither he nor his wife can squander the principal. In many states, if you leave money in trust to your son, Livia can't get at the assets if they divorce. Moreover, he can choose how much, if any, of the trust income or principal to leave Livia; if she hasn't been a good and faithful companion, he can leave the whole thing to whomever he desires.

People who want to provide for administration of their estates if they become physically or mentally unable to do so

People concerned about estate taxes

Trusts are very useful to people with substantial assets, because they can help avoid or reduce estate taxes. For example, by establishing a trust for their benefit, you can make tax-free gifts (up to the limit allowed by law) each year to your children or grandchildren during your lifetime, even if they're minors. This will reduce your taxable estate and save taxes upon your death. A properly drawn trust may also reduce estate taxes by utilizing the marital deduction or avoiding the generation skipping tax. (See chapter eight.)

SETTING UP A TRUST

If you establish one in your will, the trust provisions are contained in that document. If you create a trust during your lifetime, its provisions are contained in the **trust agreement** or **trust declaration**. The provisions of that trust document (not your will or state law) will determine what happens to the property in the trust upon your death.

With any type of trust, one of the most important issues is choosing the trustee. See chapter ten for a discussion of this issue.

Funding the trust

A testamentary trust is funded after your death, with assets that you've specified in your will and through beneficiary designations of your life insurance, IRA, and so on. Such trusts generally receive most of the estate assets, such as the proceeds from the sale of a house. Or you could set up an "unfunded" standby trust. This is a trust that could be called "minimally" funded to avoid confusion. It may have a nominal sum of money in it--\$100 or so--to get it started while you're alive (and thus make it a living trust), but it only receives substantial assets when you die. Your pourover will would direct that many or all of your assets be transferred from your estate to the trust at your death. Life insurance payable to the trust, as well as designating the trust as the beneficiary of IRAs, profit-sharing plans, and so on, will pass these assets directly to the trust outside of probate. However, other assets not already owned by the trust when you die will have to go through probate. This is why many lawyers shy away from unfunded trusts, unless probate avoidance isn't the primary goal (see chapter eleven for some reasons why you might not want to avoid probate).

If your estate--with life insurance benefits included--will add up to more than \$1 million, you can save taxes by removing the life insurance proceeds from your estate and establishing an irrevocable life insurance trust that owns the policy; all incidents of ownership in the policy belong to the trust. When you

die, the proceeds are paid into the trust, escaping estate taxation and creditors in so far as the insurance policy is concerned.

Trusts and taxes

Chapter eight discusses death and taxes, and trusts are a major part of that discussion. However, there are a few basic principles worth mentioning here. While gifts under the \$1 million level (in a trust or in a will) escape federal estate taxation, the recipients of the trust income will still have to pay income tax when they receive income from the trust. They would not have to pay tax on the principal in the trust when they collected it (unless their state has an inheritance tax).

The trustee pays, out of the principal, the taxes on income from the trust that's reinvested or put back into the principal. Capital gains from the sale of stock, real estate, and the like are generally added to the principal unless you specify otherwise.

The choice of trustee can affect the tax the trust owes. If the beneficiary is made the only trustee, some of the tax advantages of the trust can be lost. Similarly, the more powers the grantor retains, the more likely the assets in the trust will be taxable, either during the grantor's life as income tax or after death as estate tax. Consult your attorney or a tax advisor before setting up any trust for tax purposes.

Terminating a trust

Only charitable trusts can last indefinitely. Since trusts of this sort are established to accomplish a substantial benefit to the public, it is entirely appropriate that Rhodes scholarships, Pulitzer and Nobel prizes, and thousands of other awards and grants be funded by trusts that are expected to endure.

Private trusts--set up to benefit private beneficiaries--cannot last forever. The **rule against perpetuities**, which is embodied in state law and may vary somewhat from state to state, is designed to

limit the time a trust may be operative. Usually it specifies that a trust can last no longer than the life of a person alive at the time the trust is created, plus 21 years. So if you set up a trust to benefit your infant granddaughter and any children she may eventually have, and she has a long life, your trust may extend 100 years, but not much more.

Your trust agreement should contain a clause that provides how it can be terminated. A good trust drawn up by a lawyer will certainly have such a clause.

A trust often terminates when the principal is distributed to the beneficiaries, at the time stated in the trust agreement. For example, you might provide that a trust for the benefit of your children would end when the youngest child reaches a certain age. At that time, the trustee would distribute the assets to the beneficiaries according to your instructions. The law generally allows a "windup phase" to complete administration of trust duties (e.g., filing tax returns) after the trust has officially terminated.

You can also give your trustees the discretion to distribute the trust assets and terminate the trust when they think it's a good idea, or place some restrictions on their ability to do so. For example, you could allow the trustees to terminate the trust in their discretion, provided that your daughter has completed her education.

Your trust should have a termination provision even if it is an irrevocable trust. "Irrevocability" means that you, the donor, can't change your mind about how you want the trust to terminate. It doesn't mean that you can't set up termination procedures in the first place.

If you have an irrevocable trust and don't have a termination provision, it can usually terminate only if all beneficiaries consent and no material purpose of the trust is defeated. However, an irrevocable trust can also be terminated if there was fraud, duress, undue influence or other problems when the trust was set up; if the trustee and the beneficiary become the same person; if the operation of the trust becomes impracticable or illegal; or if the period of time specified in state law expires. We're obviously into technical territory here, so the basic rule is, don't

set up an irrevocable trust unless you're prepared to live--and die--by its terms.

Sidebar

CONSUMER TIP

When you approach a lawyer to help you set up a trust, make sure he or she is willing to work with you to tailor the trust to your particular needs; otherwise the primary benefit of trusts--their flexibility--is wasted. It's another reason to avoid those prefabricated, all-purpose trusts you see in self-help books and at seminars.

A good lawyer will provide you with a financial analysis to show how much you might save over time by structuring your trust in certain ways. You, in return, can help by providing comprehensive lists of assets as determined by the form in Appendix A.

Make sure you choose a lawyer who's familiar with estate planning, trusts, and, if your trust is used for saving taxes, tax law. IRS regulations governing trusts change often, and the agency has always given trusts special scrutiny.

Sidebar

WHAT IF I SET UP A TRUST AND THEN MOVE TO ANOTHER STATE?

WHICH LAW APPLIES?

State law governs trusts. If the trust involves real estate, the law of the state where the property is located applies. If it's personal property, like a car or money, or most other things, the law of the state where the grantor created the trust will probably control. If you have residences in more than one state, you can provide in your trust which of those states' laws will control the disposition of your real property.

Sidebar

KINDS OF TRUSTS

Charitable trusts are created to support some charitable purpose. Often these trusts will make an annual gift to a worthy cause of your choosing, simultaneously helping good causes and reducing the taxes on your estate.

Discretionary trusts permit the trustee to distribute income and principal among various beneficiaries or to control the disbursements to a single beneficiary, as he or she sees fit.

Insurance trusts are tax-saving trusts in which trust assets are used to buy a life insurance policy whose proceeds benefit the settlor's beneficiaries. (See chapter eight.)

Living trusts (see chapter five) enable you to put your assets in a trust while still alive. You can wear all the hats--donor, trustee, and beneficiary--or have someone else be trustee and have other beneficiaries.

Medicaid qualifying trusts are trusts that may help you qualify for federal Medicaid benefits by placing certain property in a trust, sometimes limiting your assets for Medicaid purposes. This device is mostly used when family members are concerned with paying the costs of nursing home care. It is dealt with in chapter twelve.

Revocable trusts are simply ones that can be changed, or even terminated, at any time by the donor. (Though most living trusts are revocable, a living trust and a revocable trust are not synonymous).

Irrevocable trusts cannot be changed or terminated before the time specified in the trust, but the loss of flexibility may be offset by savings in taxes.

Spendthrift trusts can be set up for people whom the grantor believes wouldn't be able to manage their own affairs--like an extravagant relative, or someone who's mentally incompetent. They may also be useful for beneficiaries who need protection from creditors.

Support trusts direct the trustee to spend only as much income and principal as may be needed for the education and support of the beneficiary.

Testamentary trusts are set up in wills.

Totten trusts are not really trusts at all. They're simply bank accounts that pass to a beneficiary immediately upon your death.

Wealth trusts are tax-saving trusts that benefit several generations of your descendants.

Sidebar

FIVE OTHER REASONS TO HAVE A TRUST

1. Trusts are generally more difficult to contest than wills.
2. Trusts can be flexible; you can authorize that payments fluctuate with the cost of living, allow extra withdrawals in case of emergency, or even set a standard figure for payment each year; if the income doesn't meet that amount, the difference can be made up out of the principal.
3. Or you can use them to impose discipline on the beneficiary. You could require the beneficiary to live within a set figure, getting a certain amount of income each year, regardless of inflation, need, or the stock market's effect on the principal.
4. Trusts are sometimes set up in divorce, for example to provide for the education of the couple's children.
5. Trusts can also be helpful if you want to make a major charitable gift but wish to retain some use of the property.

[Click here to go to Chapter 5](#)

28-LS0335U
Bannister
2/26/13

CS FOR HOUSE BILL NO. 102()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLER, Thompson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to property exemptions for retirement plans, individual retirement**
2 **accounts, and Roth IRAs; relating to transfers of individual retirement plans; relating to**
3 **the rights of judgment creditors of members of limited liability companies and partners**
4 **of limited liability partnerships; relating to the Uniform Probate Code, including**
5 **pleadings, orders, liability, and notices under the Uniform Probate Code and the Alaska**
6 **Principal and Income Act, the appointment of trust property, the Alaska Uniform**
7 **Prudent Investor Act, co-trustees, trust protectors, and trust advisors; relating to the**
8 **Alaska Principal and Income Act; relating to the Alaska Uniform Transfers to Minors**
9 **Act; relating to the disposition of human remains; relating to the tax on insurers for life**
10 **insurance policies; relating to insurable interests for certain insurance policies; relating**
11 **to restrictions on transfers of trust interests; relating to discretionary interests in**
12 **irrevocable trusts; relating to the community property of married persons; and**

1 amending Rule 64, Alaska Rules of Civil Procedure, and Rule 301(a), Alaska Rules of
2 Evidence."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 09.38.017(a) is amended to read:

5 (a) In addition to the exemption under AS 09.38.015(b), the following are
6 exempt from a claim of an individual's or beneficiary's creditor:

7 (1) the interest of the individual or beneficiary in a retirement plan;

8 [AND]

9 (2) the money or other assets payable to the individual from a
10 retirement plan;

11 (3) the interest of a beneficiary in

12 (A) a retirement plan if the beneficiary acquired the
13 interest as a result of the death of an individual; the beneficiary's interest
14 is exempt to the same extent that the individual's interest was exempt
15 immediately before the individual died;

16 (B) an individual retirement account that has been
17 transferred by the individual to the beneficiary during the individual's
18 lifetime; the beneficiary's interest is exempt to the same extent that the
19 individual's interest was exempt immediately before the transfer to the
20 beneficiary;

21 (4) the money or other assets payable to a beneficiary from

22 (A) a retirement plan if the beneficiary acquired the money
23 or other assets as a result of the death of an individual who would have
24 had, during the individual's life, an exemption in the money or other
25 assets;

26 (B) an individual retirement account if the beneficiary
27 acquired the money or other assets as a result of the transfer of the money
28 or other assets by an individual who would have had, at the time of the
29 transfer, an exemption in the money or other assets.

30 * Sec. 2. AS 09.38.017(d) is amended to read:

1 (d) A retirement plan exempt from claims under (a) of this section is
 2 conclusively presumed to be a spendthrift trust under this section, except for
 3 transfers or assignments under AS 34.40.118.

4 * Sec. 3. AS 09.38.017(e) is amended to read:

5 (e) In this section,

6 (1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

7 (2) "beneficiary" includes a person, trust, or trustee who has,
 8 before or after the death of an individual, a direct or indirect beneficial interest
 9 in a retirement plan; in this paragraph, "beneficial interest" includes an interest
 10 that is acquired

11 (A) as a designated beneficiary, survivor, co-annuitant,
 12 heir, or legatee; or

13 (B) if excludible from gross income under 26 U.S.C.
 14 (Internal Revenue Code), as a

15 (i) rollover under 26 U.S.C. 408 or 26 U.S.C. 408A;

16 (ii) a distribution from one retirement plan to
 17 another retirement plan; or

18 (iii) a distribution that is similar to (i) or (ii) of this
 19 subparagraph;

20 (3) "individual" means [AN INDIVIDUAL WHO IS] a participant in,
 21 an owner [A BENEFICIARY] of, or an alternate payee of a retirement plan;

22 (4) "individual retirement account" means an individual
 23 retirement account established under 26 U.S.C. 408 or a Roth IRA established
 24 under 26 U.S.C. 408A;

25 (5) [(3)] "retirement plan" means

26 (A) a retirement plan that is qualified under 26 U.S.C. 401(a),
 27 26 U.S.C. 403(a), 26 U.S.C. 403(b), [26 U.S.C. 408, 26 U.S.C. 408A, OR] 26
 28 U.S.C. 409, 26 U.S.C. 414(d), 26 U.S.C. 414(e), or 26 U.S.C. 457 (Internal
 29 Revenue Code);

30 (B) an individual retirement account; and

31 (C) the teachers' retirement system under AS 14.25. the

1 judicial retirement system under AS 22.25, the public employees'
2 retirement system under AS 39.35, and the elected public officers'
3 retirement system under former AS 39.37.

4 * Sec. 4. AS 10.50.380(c) is amended to read:

5 (c) This section provides the exclusive remedy that a judgment creditor of a
6 member or a member's assignee may use to satisfy a judgment out of the judgment
7 debtor's interest in the limited liability company. Other legal or equitable remedies,
8 including foreclosure on the member's limited liability company interest and a court
9 order for directions, accounts, and inquiries that the debtor member might have made,
10 are not available to the judgment creditor attempting to satisfy a judgment out of the
11 judgment debtor's interest in the limited liability company and may not be ordered by
12 a court.

13 * Sec. 5. AS 10.50.380 is amended by adding a new subsection to read:

14 (e) This section applies to limited liability companies with only one member
15 as well as to limited liability companies with more than one member.

16 * Sec. 6. AS 13.06.120 is amended to read:

17 **Sec. 13.06.120. Pleadings; when parties bound by orders; notice.** In any
18 proceedings involving trusts, nonprobate assets, or estates of decedents, minors,
19 protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or
20 AS 13.38, [INCLUDING ANY JUDICIALLY SUPERVISED SETTLEMENTS AND
21 ANY NONJUDICIAL PROCEEDINGS AND SETTLEMENTS,] the following
22 apply:

23 (1) interests to be affected shall be described in pleadings that give
24 reasonable information to owners by name or class, by reference to the instrument
25 creating the interests, or in other appropriate manner;

26 (2) persons are bound by orders binding others in the following cases:

27 (A) orders binding the sole holder or all co-holders of a power
28 of revocation or a general or nongeneral power of appointment, including one
29 in the form of a power of amendment, bind other persons to the extent their
30 interests, as objects, takers in default, or otherwise, are subject to the power;

31 (B) to the extent there is no conflict of interest between them or

1 among persons represented, orders binding a conservator bind the person
2 whose estate the conservator controls; orders binding a guardian bind the ward
3 if no conservator of the estate has been appointed; orders binding a trustee bind
4 beneficiaries of the trust in proceedings to probate a will establishing or adding
5 to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings
6 involving creditors or other third parties; orders binding a personal
7 representative bind persons interested in the undistributed assets of a
8 decedent's estate in actions or proceedings by or against the estate; and orders
9 binding an agent having authority to act with respect to the particular questions
10 or dispute bind the principal; if there is no conflict of interest and no
11 conservator or guardian has been appointed, a parent may represent the minor
12 child;

13 (C) an unborn person, a minor, an incapacitated person, or a
14 person whose identity or location is unknown or not reasonably ascertainable
15 who is not otherwise represented is bound by an order to the extent the interest
16 is adequately represented by another party having a substantially identical
17 interest in the proceeding;

18 (D) with regard to interests given upon the happening of a
19 certain event to persons who comprise a certain class, orders binding the living
20 persons who would constitute the class, if the event had happened immediately
21 before the commencement of the proceeding, bind all members of the class;

22 (E) with regard to an interest given to a living person when the
23 same interest or a share of the interest is to pass to the surviving spouse or to
24 persons who are or might be the distributees, devisees, heirs, or issue of the
25 living person upon the happening of a future event, orders binding the living
26 person bind the surviving spouse, distributees, devisees, heirs, or issue of the
27 living person;

28 (F) with regard to interests given to a person or a class of
29 persons, or to both, upon the happening of a future event, if the same interest
30 or a share of the interest is to pass to another person or class of persons, or to
31 both, upon the happening of an additional future event, orders binding the

1 living person or class of persons who would take the interest upon the
2 happening of the first event bind the persons and classes of persons who might
3 take on the happening of the additional future event;

4 (G) if a person is designated by a trust instrument to represent
5 and bind a born or unborn beneficiary of the trust and receive a notice,
6 information, accounting, or report for the beneficiary, then the beneficiary is
7 bound by an order binding the designated person; in this subparagraph,

8 (i) the settlor may make the designation in the trust
9 instrument, in a separate document, or by a trust protector authorized in
10 the trust instrument to make the designation;

11 (ii) except as otherwise provided in this subparagraph, a
12 person designated under (i) of this subparagraph may not represent and
13 bind a beneficiary while the designated person is serving as trustee;

14 (iii) except as otherwise provided in this subparagraph,
15 a person designated under (i) of this subparagraph may not represent
16 and bind another beneficiary if the designated person also is a
17 beneficiary, unless the designated person was named by the settlor, is
18 the beneficiary's spouse, or is a grandparent or descendant of a
19 grandparent of the beneficiary or the beneficiary's spouse; in this sub-
20 subparagraph, "spouse" means the individual to whom the beneficiary
21 is married and with whom the beneficiary is living, and a physical
22 separation primarily for education, business, health, and similar reasons
23 does not prevent the individual from being considered to be living with
24 the beneficiary;

25 (3) a person representing another person under (2)(A) - (F) of this
26 section and a person designated under (2)(G)(i) of this section are not liable to the
27 beneficiary whose interests are represented, or to a person claiming through that
28 beneficiary, for an action or omission to act made in good faith;

29 (4) notice is required as follows:

30 (A) notice as prescribed by AS 13.06.110 shall be given to
31 every interested person or to one person who can bind an interested person as

1 described in (2)(A), (B), or (D) - (G) of this section; notice may be given both
2 to a person and to another person who may bind the person;

3 (B) notice is given to unborn persons, a minor, an incapacitated
4 person, or a person whose identity or location is unknown or not reasonably
5 ascertainable, and persons who are not represented under (2)(A), (B), or (D) -
6 (G) of this section, by giving notice to all known persons whose interests in the
7 proceedings are substantially identical to those of the unborn persons, the
8 minor, the incapacitated person, or the person whose identity or location is
9 unknown or not reasonably ascertainable;

10 (5) at any point in a proceeding, a court may appoint a guardian ad
11 litem to represent the interest of an unborn person, a minor, an incapacitated person, or
12 a person whose identity or address is unknown or not reasonably ascertainable, if the
13 court determines that representation of the interest otherwise would be inadequate; if
14 not precluded by conflict of interests, a guardian ad litem may be appointed to
15 represent several persons or interests; the court shall set out its reasons for appointing
16 a guardian ad litem as a part of the record of the proceeding.

17 * Sec. 7. AS 13.06.120 is amended by adding a new subsection to read:

18 (b) In this section,

19 (1) "order" means a judicial order, nonjudicial order, the result of the
20 settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
21 13.36 or AS 13.38, and a settlement agreement resulting from a proceeding;

22 (2) "proceeding" means a judicial proceeding, nonjudicial proceeding,
23 the settlement of an account of a fiduciary under a procedure authorized by AS 13.06 -
24 13.36 or AS 13.38, and a settlement negotiation, even if the settlement negotiation
25 does not involve a judicial or nonjudicial third party who decides or facilitates a
26 settlement.

27 * Sec. 8. AS 13.36.072 is amended by adding a new subsection to read:

28 (c) Notwithstanding the other provisions of this section, if the terms of a trust
29 instrument provide for the appointment of more than one trustee but confer on one or
30 more of the trustees, to the exclusion of other trustees, the power to direct or prevent
31 specified actions of other trustees, the excluded trustees shall act in accordance with

1 the exercise of the power. An excluded trustee under this subsection is not liable,
2 individually or as a fiduciary, for a consequence that results from complying with the
3 exercise of the power, regardless of the information available to the excluded trustee.
4 An excluded trustee does not have an obligation to review, inquire, investigate, or
5 make recommendations or evaluations with respect to the exercise of the power. A
6 trustee having the power is liable to the beneficiaries as a fiduciary with respect to the
7 exercise of the power as if the excluded trustees were not in office and has the
8 exclusive obligation to account to and to defend an action brought by the beneficiaries
9 with respect to the exercise of the power. In this subsection, "power" means the power
10 to direct or prevent specified actions by other trustees.

11 * Sec. 9. AS 13.36.157 is repealed and reenacted to read:

12 **Sec. 13.36.157. Exercise of power of appointment.** (a) An authorized trustee
13 with unlimited discretion to invade trust principal may appoint part or all of that
14 principal to a trustee of an appointed trust for, and only for the benefit of, one or more
15 current beneficiaries of the invaded trust to the exclusion of other current
16 beneficiaries. A permissible appointee of a power of appointment held by a
17 beneficiary of the appointed trust is not considered a beneficiary of the appointed trust,
18 regardless of whether the permissible appointee is a current beneficiary or a successor
19 and remainder beneficiary.

20 (b) An authorized trustee exercising the power under (a) of this section may
21 grant a discretionary power of appointment, including a presently exercisable power of
22 appointment, in the appointed trust to one or more of the current beneficiaries of the
23 invaded trust, to the extent that the beneficiary who is granted the power to appoint is
24 authorized to receive the principal outright under the terms of the invaded trust. A
25 permissible appointee is not limited to the beneficiaries of the invaded trust.

26 (c) Under (a) and (b) of this section, if the beneficiaries of the invaded trust
27 are described by a class, the beneficiaries of the appointed trust may include present or
28 future members of that class.

29 (d) An authorized trustee with the power to invade trust principal but without
30 unlimited discretion may appoint part or all of the principal of the trust to a trustee of
31 an appointed trust if the current beneficiaries of the appointed trust are the same as the

1 current beneficiaries of the invaded trust and the successor and remainder beneficiaries
2 of the appointed trust are the same as the successor and remainder beneficiaries of the
3 invaded trust. The shares of the current beneficiaries of the appointed trust must be the
4 same as the shares of the current beneficiaries of the invaded trust, and the shares of
5 the successor and remainder beneficiaries of the appointed trust must be the same as
6 the shares of the successor and remainder beneficiaries of the invaded trust.

7 (e) If the authorized trustee exercises the power under (d) of this section, the
8 appointed trust must include the same standard authorizing the trustee to distribute the
9 income or invade the principal of the appointed trust as the standard in the invaded
10 trust. However, the standard authorizing the trustee to distribute the income or invade
11 the principal of the appointed trust may be changed if the trustee appoints to an
12 appointed trust that is a special needs trust, a pooled trust, or a third-party trust.

13 (f) If an authorized trustee exercises the power under (d) and (e) of this section
14 to extend the duration of the appointed trust beyond the duration of the invaded trust
15 for any period after the invaded trust would have otherwise terminated under the
16 provisions of the invaded trust, the appointed trust, in addition to the language
17 required to be included in the appointed trust under (e) of this section, may also
18 provide an additional trustee with unlimited discretion to invade the principal of the
19 appointed trust during the extended duration. The trustee with unlimited discretion
20 continues to be subject to the restrictions in (d) - (h) of this section.

21 (g) Under (d) - (f) of this section, if the beneficiaries of the invaded trust are
22 described by a class, the beneficiaries of the appointed trust include present or future
23 members of that class.

24 (h) If the authorized trustee exercises the power under (d) - (g) of this section
25 and if the invaded trust grants a power of appointment to a beneficiary of the trust, the
26 appointed trust must grant this power of appointment in the appointed trust, and the
27 class of permissible appointees shall be the same as in the invaded trust.

28 * Sec. 10. AS 13.36 is amended by adding new sections to read:

29 **Sec. 13.36.158. Additional provisions relating to exercise of a power of**
30 **appointment.** (a) An exercise of the power to invade trust principal under
31 AS 13.36.157 is the exercise of a special power of appointment.

1 (b) The appointed trust to which an authorized trustee appoints the assets of
2 the invaded trust under AS 13.36.157 may have a duration that is longer than the
3 duration set out in the invaded trust.

4 (c) If an authorized trustee has unlimited discretion to invade the principal of a
5 trust and if the same trustee or another trustee has a power, not dependent on unlimited
6 discretion, to invade principal under the trust instrument, the authorized trustee having
7 unlimited discretion may exercise the power of appointment under AS 13.36.157(a) -
8 (c).

9 (d) An authorized trustee may exercise the power to appoint in favor of an
10 appointed trust under AS 13.36.157 whether or not there is a current need to invade
11 principal under the terms of the invaded trust.

12 (e) An authorized trustee exercising the power under AS 13.36.157 -
13 13.36.159 has a fiduciary duty to exercise the power in the best interests of one or
14 more proper objects of the exercise of the power and as a prudent person would
15 exercise the power under the prevailing circumstances. The authorized trustee may not
16 exercise the power under AS 13.36.157 - 13.36.159 if there is substantial evidence of a
17 contrary intent of the settlor and it cannot be established that the settlor would be
18 likely to have changed this intention under the circumstances existing at the time the
19 trustee exercises the power. The provisions of the invaded trust may not be viewed
20 alone as substantial evidence of a contrary intent of the settlor unless the invaded trust
21 expressly prohibits the exercise of the power in the manner intended by the authorized
22 trustee.

23 (f) The provisions of AS 13.36.157 - 13.36.159 may not be construed to
24 abridge the right of a trustee to appoint property further in trust under the terms of the
25 governing instrument of a trust, another provision of law, or common law, or as
26 directed by a court having jurisdiction over the trust.

27 (g) Nothing in AS 13.36.157 - 13.36.159 creates or implies a duty to exercise
28 a power to invade principal. An inference of impropriety may not be made, and
29 liability is not incurred, as a result of an authorized trustee not exercising the power
30 conferred under AS 13.36.157.

31 (h) A power authorized by AS 13.36.157 may be exercised, subject to the

1 provisions of AS 13.36.159(a), unless expressly prohibited by the terms of the
2 governing instrument. A general prohibition against amending or revoking the invaded
3 trust and a provision that constitutes a spendthrift clause do not preclude the exercise
4 of a power under AS 13.36.157.

5 (i) An authorized trustee may not exercise a power authorized by
6 AS 13.36.157 to

7 (1) reduce, limit, or modify a beneficiary's current right to a mandatory
8 distribution of income or principal, a mandatory annuity or unitrust interest, a right to
9 withdraw a percentage of the value of the trust, or a right to withdraw a specified
10 dollar amount, if the mandatory right has come into effect with respect to the
11 beneficiary, but the mandatory right may be reduced, limited, or modified during any
12 extended duration of the trust; however, notwithstanding the other provisions in this
13 paragraph, but subject to the other limitations in AS 13.36.157 - 13.36.159, an
14 authorized trustee may exercise a power authorized by AS 13.36.157 to appoint to an
15 appointed trust that is a special needs trust, a pooled trust, or a third-party trust;

16 (2) decrease or indemnify against a trustee's liability or exonerate a
17 trustee from liability for failure to exercise reasonable care, diligence, and prudence
18 unless the court having jurisdiction over the trust specifies otherwise;

19 (3) eliminate a provision granting another person the right to remove
20 or replace the authorized trustee exercising the power under AS 13.36.157 unless a
21 court having jurisdiction over the trust specifies otherwise;

22 (4) fix as binding and conclusive the value of an asset for purposes of
23 distribution, allocation, or otherwise; or

24 (5) jeopardize

25 (A) the deduction or exclusion originally claimed with respect
26 to a contribution to the invaded trust that qualified for the annual exclusion
27 under 26 U.S.C. 2503(b), the marital deduction under 26 U.S.C. 2056(a) or 26
28 U.S.C. 2523(a), or the charitable deduction under 26 U.S.C. 170(a), 26 U.S.C.
29 642(c), 26 U.S.C. 2055(a), or 26 U.S.C. 2522(a) (Internal Revenue Code);

30 (B) the qualification of a transfer as a direct skip under 26
31 U.S.C. 2642(c) (Internal Revenue Code);

1 (C) the election to treat a corporation as a subchapter S
2 corporation under 26 U.S.C. 1362 (Internal Revenue Code); or

3 (D) another specific tax benefit for which a contribution
4 originally qualified for income, gift, estate, or generation-skipping transfer tax
5 purposes under 26 U.S.C. (Internal Revenue Code).

6 (j) Before exercising the power under AS 13.36.157, an authorized trustee
7 shall consider the tax implications of the exercise of the power.

8 (k) An authorized trustee may not exercise a power described in AS 13.36.157
9 - 13.36.159 in violation of the limitations on validity in AS 34.27.051 or 34.27.100, or
10 the restrictions on exercising certain powers in AS 13.36.153 by trustees who are not
11 independent. A violation voids the entire exercise of the power unless the exercise is
12 modified to correct the violation.

13 (l) Unless a court having jurisdiction over the trust directs otherwise, an
14 authorized trustee may not exercise a power authorized by AS 13.36.157 to change the
15 provisions regarding the determination of the compensation of a trustee. The
16 commissions or other compensation payable to the trustees of the invaded trust may
17 continue to be paid to the trustees of the appointed trust during the term of the
18 appointed trust and shall be determined in the same manner as for the invaded trust.

19 (m) A trustee may not receive a payment, a commission, or other
20 compensation for appointing property from the invaded trust to an appointed trust
21 under AS 13.36.157. However, a trustee may be compensated at a reasonable rate for
22 the time spent considering and implementing the exercise of a power to appoint.

23 (n) Unless the invaded trust expressly provides otherwise, the provisions in
24 AS 13.36.157 - 13.36.159 apply to

25 (1) a trust, whether testamentary or inter vivos, governed by the laws
26 of this state, including a trust whose governing law has been changed to the laws of
27 this state; and

28 (2) a trust that has a trustee who is an individual domiciled in this state,
29 or a trustee that is an entity having an office in this state, if a majority of the trustees
30 select this state as the location for the primary administration of the trust and the
31 selection is made by an instrument in writing that is signed and acknowledged by a

1 majority of the trustees; the instrument exercising this selection shall be kept with the
2 records of the invaded trust.

3 (o) In this section, "internal revenue code" means the Internal Revenue Code
4 of the United States (26 U.S.C.) as it exists on the effective date of this Act and as it is
5 amended from time to time.

6 **Sec. 13.36.159. Implementation of power of appointment.** (a) Unless the
7 authorized trustee provides otherwise, the appointment of

8 (1) all of the assets making up the principal of the invaded trust to an
9 appointed trust includes subsequently discovered assets of the invaded trust and
10 undistributed principal of the invaded trust acquired after the appointment to the
11 appointed trust;

12 (2) a part but not all of the assets making up the principal of the
13 invaded trust to an appointed trust may not include subsequently discovered assets
14 belonging to the invaded trust or principal paid to or acquired by the invaded trust
15 after the appointment to the appointed trust; those subsequently discovered assets
16 remain the assets of the invaded trust.

17 (b) The exercise of the power to appoint to an appointed trust under
18 AS 13.36.157 shall be evidenced by an instrument in writing that is signed, dated, and
19 acknowledged by the authorized trustee. The exercise of the power is effective 30 days
20 after the date of service of the instrument as specified in (d) of this section, unless the
21 persons entitled to notice consent in writing to a sooner effective date.

22 (c) An authorized trustee may exercise the power authorized by AS 13.36.157
23 without the consent of the settlor or a person interested in the invaded trust and
24 without court approval. However, an authorized trustee may seek court approval for
25 the exercise. When seeking court approval, notice shall be sent to all qualified
26 beneficiaries.

27 (d) A copy of the invaded trust, the appointed trust, and the instrument
28 exercising the power shall be delivered to

29 (1) the settlor, if living, of the invaded trust;

30 (2) a person having the right, under the terms of the invaded trust, to
31 remove or replace the authorized trustee exercising the power under AS 13.36.157;

1 and

2 (3) a qualified beneficiary or a person who may represent and bind a
3 qualified beneficiary under AS 13.06.120.

4 (e) Notice under (d) of this section to a qualified beneficiary is not required if
5 the settlor has exempted the authorized trustee from providing notification or
6 information to beneficiaries under AS 13.36.080(b). Notice under (d) of this section
7 shall be provided under AS 13.06.110.

8 (f) The instrument exercising the power must state whether the appointment is
9 of all or part of the assets making up the principal of the invaded trust and, if a part,
10 the approximate percentage of the value of the principal of the invaded trust that is the
11 subject of the appointment. A failure to state whether the appointment is of all or part
12 of the assets creates a presumption that only part of the assets is to be appointed.

13 (g) A person entitled to notice under (d) of this section may object to the
14 trustee's exercise of the power under AS 13.36.157 - 13.36.159 by serving a written
15 notice of objection on the trustee before the effective date of the exercise of the power.
16 The failure to object does not constitute consent.

17 (h) The receipt of a copy of the instrument exercising the power does not,
18 before the expiration of the limitation period in AS 13.36.100 with respect to a report
19 disclosing the exercise, affect the right of a qualified beneficiary to object to the
20 exercise of the power under AS 13.36.157 and to request the court to modify or to
21 reverse the exercise.

22 (i) A copy of the instrument exercising the power shall be kept with the
23 records of the invaded trust.

24 * Sec. 11. AS 13.36.215 is amended by adding a new subsection to read:

25 (b) In AS 13.36.157 - 13.36.159,

26 (1) "appointed trust" means an irrevocable trust that receives principal
27 from an invaded trust under AS 13.36.157, including a new trust created by the settlor
28 of the invaded trust or by the trustees, acting in that capacity, of the invaded trust;

29 (2) "authorized trustee" means, with regard to an invaded trust, a
30 trustee with the authority to pay trust principal to or for a current beneficiary; in this
31 paragraph, "trustee" does not include a settlor or a beneficiary to whom income or

1 principal must be paid, currently or in the future, or who is or will become eligible to
2 receive a distribution of income or principal in the discretion of the trustee other than
3 by the exercise of a power of appointment held in a nonfiduciary capacity;

4 (3) "current beneficiary" means a person or, with regard to a class of
5 persons, a person who is a member of the class, to whom a trustee may distribute
6 principal when exercising a power under AS 13.36.157;

7 (4) "invade" means pay directly to the beneficiary of a trust or apply to
8 the benefit of a beneficiary;

9 (5) "invaded trust" means an irrevocable inter vivos or testamentary
10 trust the principal of which is appointed under AS 13.36.157;

11 (6) "pooled trust" means a trust described in 42 U.S.C. 1396p(d)(4)(C)
12 that meets the requirements for a pooled trust under the regulations of this state
13 relating to the Medicaid treatment of trusts;

14 (7) "principal" means the assets of a trust, including accrued and
15 accumulated income, but excluding income that is currently required to be distributed;

16 (8) "special needs trust" means a trust under 42 U.S.C. 1396p(d)(4)(A)
17 that meets the requirements for a special needs trust under the regulations of this state
18 relating to the Medicaid treatment of trusts;

19 (9) "third-party trust" means a trust that is

20 (A) established by a third party with the assets of the third party
21 to provide for supplemental needs for a person eligible when the trust is
22 created or at a future time for needs-based public assistance; and

23 (B) exempt from the provisions of the regulations of this state
24 relating to the Medicaid treatment of trusts;

25 (10) "unlimited discretion" means the unlimited right to distribute
26 principal if the right is not restricted by an ascertainable standard under 26 C.F.R.
27 25.2514-1.

28 * Sec. 12. AS 13.36.225(a) is amended to read:

29 (a) Except as otherwise provided in (b) of this section and AS 13.36.273, a
30 trustee who invests and manages trust assets owes a duty to the beneficiaries of the
31 trust to comply with the prudent investor rule set out in AS 13.36.230 - 13.36.290.

1 * **Sec. 13. AS 13.36 is amended by adding a new section to read:**

2 **Sec. 13.36.273. Trustee duties relating to insurance.** (a) With respect to a
3 contract for life insurance acquired or retained for a trust on the life of a qualified
4 person, a trustee does not have a duty to determine whether the contract was procured
5 or effected in accordance with AS 21.42.020 unless the trust instrument provides
6 otherwise or unless the trustee applied for or accepted ownership of a contract of life
7 insurance and had knowledge that

8 (1) when the contract of life insurance was issued, the benefits were
9 not payable to a person specified in AS 21.42.020; or

10 (2) the contract was purchased with resources or guarantees directly or
11 indirectly provided by a person who, when the contract was entered into, did not have
12 an insurable interest in the insured, and, when the contract was entered into there was
13 a verbal or written arrangement, agreement, or plan with a third party to transfer
14 ownership of the policy or the policy benefits in a manner that would violate the law
15 of this state.

16 (b) With respect to a contract for life insurance acquired or retained for a trust
17 on the life of a qualified person, if this subsection applies under (c) of this section, a
18 trustee does not have a duty to

19 (1) determine whether a contract of life insurance is a proper
20 investment;

21 (2) investigate the financial strength of the person issuing the life
22 insurance policy;

23 (3) determine whether to exercise a policy option available under the
24 contract;

25 (4) diversify the contract or the assets of the trust with respect to the
26 contract; or

27 (5) inquire about or investigate the health or financial condition of an
28 insured.

29 (c) Unless the trust instrument provides otherwise, (b) of this section applies
30 to a trustee if

31 (1) the trust instrument refers to this section and makes this section

1 applicable to contracts for life insurance held by the trust; or

2 (2) the trustee notifies the qualified beneficiaries or a person who may
3 represent and bind the qualified beneficiaries under AS 13.06.120 that the trustee is
4 electing to have this section apply to a contract for life insurance held by the trust.

5 (d) The notice provided under (c)(2) of this section must include a copy or
6 restatement of (b) of this section and shall be provided

7 (1) by mailing a copy of the notice by certified, registered, or ordinary
8 first-class mail addressed to the person being notified at the post office address given
9 in the person's demand for notice, if any, or at the person's office or place of residence,
10 if known;

11 (2) by delivering a copy of the notice personally to the person being
12 notified; or

13 (3) if the address or identity of the person is not known and cannot be
14 ascertained with reasonable diligence, by publishing, at least once a week for three
15 consecutive weeks, a copy of the notice in a newspaper having general circulation in
16 the judicial district where one of the trustees is located.

17 (e) If, within 30 days after a person receives notice under (d)(1) or (2) of this
18 section or 30 days after the last date of publication of the notice under (d)(3) of this
19 section, a person delivers to the trustee a written objection to the application of (b) of
20 this section, (b) of this section does not apply until the objection is withdrawn.

21 (f) Under (a) and (b) of this section, the trustee is not liable to the beneficiaries
22 of the trust or to another person for a loss sustained with respect to a life insurance
23 contract to which (a) and (b) of this section apply.

24 (g) Notwithstanding the other provisions of this section, unless the duties have
25 been delegated to another person under AS 13.36.270, (a) and (b) of this section do
26 not apply to a contract for life insurance purchased from an affiliate of a trustee or for
27 which a trustee or an affiliate of the trustee receives a commission. In this subsection,
28 "affiliate" means a person who controls, is controlled by, or is under common control
29 with the trustee.

30 (h) A trustee who performs fiduciary or advisory services related to a policy of
31 life insurance to which (a)(1) or (2) of this section applies may not be compensated for

1 performing the services to which (a)(1) or (2) of this section applies.

2 (i) In this section, "qualified person" means a person who

3 (1) is an insured or a proposed insured under a policy of life insurance
4 or the spouse of that person; and

5 (2) provides

6 (A) the actual funds used to acquire or pay the premiums for
7 the policy; or

8 (B) assets the income or principal of which are used to acquire
9 or pay the premiums for the policy.

10 * Sec. 14. AS 13.36.370(a) is amended to read:

11 (a) A trust instrument may provide for the appointment of a
12 [DISINTERESTED THIRD PARTY TO ACT AS A] trust protector.

13 * Sec. 15. AS 13.36.375 is amended by adding a new subsection to read:

14 (c) Notwithstanding (b) of this section, if, by the terms of the trust instrument,
15 a trustee is designated to follow the directions of an advisor who is not designated in
16 the trust instrument as being a trustee, the trustee who, by the terms of the trust
17 instrument, is required to follow the directions of the advisor is not liable, individually
18 or as a fiduciary, to a beneficiary for a consequence of the trustee's compliance with
19 the advisor's directions, regardless of the information available to the trustee, and the
20 trustee does not have an obligation to review, inquire, investigate, or make
21 recommendations or evaluations with respect to the exercise of a power of the trustee
22 if the exercise of the power complies with the directions given to the trustee. An
23 advisor under this subsection is liable to the beneficiaries as a fiduciary with respect to
24 the exercise of the advisor's directions by a trustee as if the trustee were not in office,
25 and the advisor has the exclusive obligation to account to the beneficiaries and to
26 defend an action brought by the beneficiaries with respect to the exercise of the
27 advisor's directions by the trustee.

28 * Sec. 16. AS 13.38.200(b) is amended to read:

29 (b) In exercising a discretionary power of administration regarding a matter
30 within the scope of this chapter, whether granted by the governing instrument or this
31 chapter, including AS 13.38.210 and 13.38.300 - 13.38.435 [13.38.300 - 13.38.410], a

1 fiduciary shall administer a trust or estate impartially based on what is fair and
2 reasonable to all of the beneficiaries, except to the extent that the governing
3 instrument clearly manifests an intention that the fiduciary shall or may favor one or
4 more of the beneficiaries. A determination in accordance with this chapter is presumed
5 to be fair and reasonable to all of the beneficiaries.

6 * Sec. 17. AS 13.38.210(c) is amended to read:

7 (c) A trustee may not make an adjustment under this section if

8 (1) the adjustment would diminish the income interest in a trust that
9 requires all of the income to be paid at least annually to a spouse and for which a
10 federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if
11 the trustee did not have the power to make the adjustment; the prohibition in this
12 paragraph does not apply to a trust after the trustee determines that the marital
13 deduction has not been claimed or has not been allowed;

14 (2) the adjustment would reduce the actuarial value of the income
15 interest in a trust to which a person transfers property with the intent to qualify for a
16 federal gift tax exclusion;

17 (3) the adjustment would change the amount payable to a beneficiary
18 as a fixed annuity or a fixed fraction of the value of the trust assets;

19 (4) the adjustment is from any amount that is permanently set aside for
20 charitable purposes under the governing instrument and for which a federal estate or
21 gift tax charitable deduction has been taken, unless both income and principal are
22 permanently set aside for charitable purposes under the governing instrument;

23 (5) possessing or exercising the power to make an adjustment would
24 cause an individual to be treated as the owner of all or part of the trust for federal
25 income tax purposes, and the individual would not be treated as the owner if the
26 trustee did not possess the power to make an adjustment;

27 (6) possessing or exercising the power to make an adjustment would
28 cause all or part of the trust assets to be subject to federal estate or gift tax with respect
29 to an individual, and the assets would not be subject to federal estate or gift tax with
30 respect to the individual if the trustee did not possess the power to make an
31 adjustment;

1 (7) the trustee is a beneficiary of the trust; or

2 (8) the trust has been converted to a unitrust under AS 13.38.300 -
3 13.38.435 [AS 13.38.300 - 13.38.410].

4 * Sec. 18. AS 13.38.300 is amended to read:

5 **Sec. 13.38.300. Power to convert to unitrust.** Unless expressly prohibited by
6 the governing instrument, a trustee may release the power to adjust under
7 AS 13.38.210 and may convert a trust into a unitrust as described in AS 13.38.300 -
8 13.38.435 [AS 13.38.300 - 13.38.410] if

9 (1) the trustee determines that the conversion will enable the trustee to
10 better carry out the intent of the settlor or testator and the purposes of the trust;

11 (2) the trustee gives written notice of the trustee's intention to release
12 the power to adjust, of the trustee's intention to convert the trust into a unitrust, of the
13 unitrust percentage selected, of the smoothing period selected, and of how the
14 unitrust will operate, including what initial decisions the trustee intends to [WILL]
15 make under AS 13.38.340 [THIS SECTION], to all the sui juris beneficiaries who

16 (A) are currently eligible to receive income from the trust;

17 (B) would be eligible, if a power of appointment were not
18 exercised, to receive income from the trust if the interest of all of the
19 beneficiaries eligible to receive income under (A) of this paragraph were to
20 terminate immediately before the giving of the notice; and

21 (C) would, if a power of appointment were not exercised,
22 receive a distribution of principal if the trust were to terminate immediately
23 before the giving of the notice;

24 (3) there are at least one sui juris beneficiary under (2)(A) of this
25 section and at least one sui juris beneficiary under (2)(B) or (C) of this section; and

26 (4) a sui juris beneficiary does not object to the conversion to a unitrust
27 in a writing delivered to the trustee within 60 days after the mailing of the notice under
28 (2) of this section.

29 * Sec. 19. AS 13.38.310(a) is amended to read:

30 (a) A trustee may petition the court to approve the conversion to a unitrust if

31 (1) a beneficiary timely objects to the conversion to a unitrust; [OR]

1 (2) there is not a sui juris beneficiary who is currently eligible under
2 AS 13.38.300(2)(A) or who would be eligible under AS 13.38.300(2)(B) or (C); or

3 (3) the trustee is a beneficiary [AS 13.38.300(2)(A), AND THERE
4 IS NOT A SUI JURIS BENEFICIARY WHO IS ELIGIBLE UNDER
5 AS 13.38.300(2)(B) OR (C)].

6 * Sec. 20. AS 13.38.330(b) is amended to read:

7 (b) After a trust has been converted to a unitrust, "income" in the governing
8 instrument means an annual distribution equal to the amount produced by the
9 application of a fixed unitrust percentage established under (d) of this section to
10 [FOUR PERCENT OF] the net fair market value, as determined annually, of the trust's
11 assets, whether the assets would be considered income or principal under other
12 provisions of this chapter, averaged over the lesser of

13 (1) the preceding years in the smoothing period selected by the
14 trustee; or

15 (2) the period during which the trust has been in existence.

16 * Sec. 21. AS 13.38.330 is amended by adding a new subsection to read:

17 (d) The unitrust percentage to be used in determining the amount to be
18 distributed from a unitrust to a beneficiary must be a reasonable current return from
19 the unitrust of at least three percent and not more than five percent, taking into account
20 the intentions of the trustor of the unitrust as expressed in the governing instrument,
21 the needs of the beneficiaries, general economic conditions, projected current earnings
22 for the unitrust, projected appreciation for the unitrust, and the effect of projected
23 inflation on the unitrust.

24 * Sec. 22. AS 13.38.340 is amended to read:

25 **Sec. 13.38.340. Trustee's discretionary powers regarding unitrust.** The
26 trustee may, in the trustee's discretion, from time to time, determine

27 (1) the effective date of a conversion to a unitrust;

28 (2) the provisions for prorating a unitrust distribution for a short year
29 in which a beneficiary's right to payments commences or ceases;

30 (3) the frequency of unitrust distributions during the year;

31 (4) the effect of other payments from or contributions to the trust on

1 the trust's valuation;

2 (5) whether to value the trust's assets annually or more frequently;

3 (6) whether to use a smoothing period of three, four, or five years;

4 (7) what valuation dates to use;

5 (8) [(7)] how frequently to value nonliquid assets and whether to
6 estimate their value;

7 (9) [(8)] whether to omit trust property occupied or possessed by a
8 beneficiary from the calculations; and

9 (10) [(9)] other matters necessary for the proper functioning of the
10 unitrust.

11 * Sec. 23. AS 13.38.350(b) is amended to read:

12 (b) Unless otherwise provided by the governing instrument, a unitrust
13 distribution shall be considered to have been paid from net income as net income
14 would be determined if the trust were not a unitrust. To the extent net income is
15 insufficient, the unitrust distribution shall be considered to have been paid from
16 ordinary income that is allocable under federal income tax rules to net income as
17 determined for a unitrust. To the extent that the ordinary income is insufficient,
18 the unitrust distribution is considered to have been paid from net realized short-
19 term capital gains. To the extent net income, ordinary income, and net realized short-
20 term capital gains are insufficient, the unitrust distribution shall be considered to have
21 been paid from net realized long-term capital gains. To the extent net income,
22 ordinary income, and net realized short-term and long-term capital gains are
23 insufficient, the unitrust distribution shall be paid from the principal of the trust.

24 * Sec. 24. AS 13.38.360 is amended to read:

25 Sec. 13.38.360. Court orders regarding unitrust. The trustee or, if the trustee
26 declines to petition the court, a beneficiary may petition the court to

27 [(1) SELECT A PAYOUT PERCENTAGE DIFFERENT THAN
28 FOUR PERCENT;

29 (2)] provide for a distribution of net income, as would be determined if
30 the unitrust [TRUST] were not a unitrust, in excess of the unitrust distribution if the
31 distribution is necessary to preserve a tax benefit [;

1 (3) AVERAGE THE VALUATION OF THE TRUST'S NET ASSETS
2 OVER A PERIOD OTHER THAN THREE YEARS].

3 * Sec. 25. AS 13.38.390(b) is amended to read:

4 (b) If AS 13.38.380(a)(3), (4), or (6) applies to all the trustees, the trustees
5 may petition the court to direct a conversion. In the alternative, the trustees may
6 appoint an independent person who shall be granted the authority, while acting
7 in a fiduciary capacity, to make decisions in place of the trustees relating to a
8 conversion, reconversion, and the exercise of discretionary powers under
9 AS 13.38.340.

10 * Sec. 26. AS 13.38.400 is amended to read:

11 **Sec. 13.38.400. Reconversion from a unitrust.** A trustee may reconvert a
12 trust that has been converted into a unitrust under AS 13.38.300 by following the same
13 procedures provided in AS 13.38.300 - 13.38.435 [AS 13.38.300 - 13.38.410] for
14 converting a trust into a unitrust. If a unitrust is reconverted under this section, the
15 trustee's power to adjust under AS 13.38.210 applies to the trustee after the
16 reconversion.

17 * Sec. 27. AS 13.38 is amended by adding new sections to article 2 to read:

18 **Sec. 13.38.420. Express total return unitrusts.** (a) This section applies to a
19 trust that, by its governing instrument, requires the distribution, at least annually, of a
20 unitrust amount.

21 (b) The trustee of an express total return unitrust may determine the unitrust
22 amount by reference to the net fair market value of the unitrust's assets in one or more
23 years.

24 (c) Distribution of a unitrust amount is considered a distribution of all of the
25 income of an express total return unitrust and is considered to be an income interest.

26 (d) Distribution of a unitrust amount is considered to be a reasonable
27 apportionment of the total return of an express total return unitrust.

28 (e) An express total return unitrust that provides for a distribution based on a
29 unitrust percentage in excess of five percent of the net fair market value of the unitrust
30 assets a year is considered a distribution of all of the income of the unitrust and a
31 distribution of principal of the unitrust to the extent that the distribution exceeds five

1 percent a year.

2 (f) The governing instrument of an express total return unitrust may grant
3 discretion to the trustee to adopt a consistent practice of treating capital gains as part
4 of the unitrust amount to the extent that the unitrust amount exceeds the income
5 determined as if the trust were not an express total return unitrust, or the governing
6 instrument may specify the ordering of classes of income.

7 (g) Unless the terms of the express total return unitrust specifically provide
8 otherwise, a unitrust amount is considered a distribution made from the following
9 sources, which are listed in order of priority:

- 10 (1) net income determined as if the trust were not a unitrust;
- 11 (2) ordinary income not allocable to net income;
- 12 (3) net realized short-term capital gains;
- 13 (4) net realized long-term capital gains; and
- 14 (5) the principal of the trust estate.

15 (h) The governing instrument of an express total return unitrust may provide
16 that the trustee may exclude assets used by the unitrust's beneficiary, including a
17 residence property or tangible personal property, from the net fair market value of the
18 unitrust's assets for the purposes of computing the unitrust amount. These assets may
19 be considered equivalent to income or to the unitrust amount.

20 (i) In this section,

21 (1) "express total return unitrust" means a trust that, by its governing
22 instrument, requires the distribution, at least annually, of a unitrust amount;

23 (2) "unitrust amount" means an amount equal to a fixed percentage of
24 not less than three nor more than five percent each year of the net fair market value of
25 the annual value of the trust's assets distributed from an express total return unitrust to
26 a beneficiary.

27 **Sec. 13.38.430. Power to treat gains as part of distribution of principal.**
28 Unless prohibited by the unitrust's governing instrument or specifically addressed by
29 AS 13.38.350 or 13.38.420, the trustee of a unitrust may treat gains from the sale of
30 capital assets of the unitrust to be part of a distribution of principal to a beneficiary,
31 and, if the trustee treats those gains as part of a distribution of principal to a

1 beneficiary, the trustee shall treat those gains consistently on the unitrust's books,
2 records, and tax returns as part of a distribution to a beneficiary.

3 **Sec. 13.38.435. Definitions.** In AS 13.38.300 - 13.38.435,

4 (1) "smoothing period" means the period of years over which the fair
5 market value of the assets of a unitrust are averaged;

6 (2) "unitrust percentage" means the unitrust percentage established
7 under AS 13.38.330(d).

8 * Sec. 28. AS 13.38.690(a) is repealed and reenacted to read:

9 (a) A trustee shall allocate

10 (1) to income that portion of a payment that equals the greater of the
11 following:

12 (A) the portion that the payor characterizes as interest, a
13 dividend, a remittance in place of interest, or a remittance in place of a
14 dividend; or

15 (B) the portion that is characterized as imputed interest for
16 federal income purposes;

17 (2) to principal that portion of a payment that remains after the
18 allocation is made under (1) of this subsection.

19 * Sec. 29. AS 13.38.690(b) is amended to read:

20 (b) If no [A] part of a payment under a contract calling for equal installments
21 over a fixed period of time is [NOT] allocable to income under the provisions of (a) of
22 this section, the difference between the trust's acquisition value of the contract and the
23 total expected return is [SHALL BE] considered to be interest. The trustee shall
24 allocate to income the portion of each payment equivalent to interest on the then
25 unpaid principal balance at the rate specified in the contract or at a rate necessary to
26 amortize the difference between the expected return and the acquisition value, where
27 that rate is readily ascertainable by the trustee.

28 * Sec. 30. AS 13.38.690(c) is amended to read:

29 (c) If no [THERE IS NOT A] portion of a payment from a separate fund held
30 exclusively for the benefit of the trust [THAT] is allocable to income under (a) or (b)
31 of this section, but the internal net income of the fund determined as if the fund were a

1 separate trust subject to AS 13.38.200 - 13.38.410, 13.38.500 - 13.38.690, or
2 13.38.710 - 13.38.860 [AS 13.38.500 - 13.38.860] is readily ascertainable by the
3 trustee, the internal net income of the fund is considered to be the income earned
4 by the fund, and the portion of the payment equal to the then undistributed net
5 income of the fund realized since the trust acquired its interest in the fund is
6 considered to be a distribution of that internal net income of the fund and shall be
7 allocated to the trust income account. The balance of the payment described in this
8 subsection shall be allocated to principal. The power to adjust under AS 13.38.210,
9 the power to convert to a unitrust under AS 13.38.300, and the provisions of
10 AS 13.38.420 apply to retirement benefits covered by this subsection that are
11 payable to a trust. Those powers and provisions may be exercised by the payee
12 trustee or in the governing instrument for the retirement benefits separately and
13 independently from the exercise by the payee trustee or in the governing
14 instrument of those powers and provisions for the trust, as if the retirement
15 benefits and the trust were separate trusts subject to this chapter.

16 * Sec. 31. AS 13.38.690(d) is amended to read:

17 (d) A trustee shall allocate 10 percent of the part of the payment that is
18 required to be made during the accounting period to income and the balance to
19 principal if there is no [NOT A] part of the payment that is allocable to income under
20 (a) - (c) of this section and all or part of the payment is required to be made. The
21 trustee shall allocate the entire payment to principal if no [A] part of a payment is
22 [NOT] required to be made or the payment received is the entire amount to which the
23 trustee is entitled. In this subsection, a payment is not "required to be made" to the
24 extent that it is made because the trustee exercises a right of withdrawal.

25 * Sec. 32. AS 13.38.690(e) is amended to read:

26 (e) If, to obtain a federal estate or gift tax marital deduction for a trust, the
27 trustee must allocate more of a payment to income than provided for by this section,
28 the trustee shall allocate to income the additional amount necessary to obtain the
29 marital deduction [TO INCOME].

30 * Sec. 33. AS 13.46.190 is amended to read:

31 **Sec. 13.46.190. Termination of custodianship.** The custodian shall transfer in

1 an appropriate manner the custodial property to the minor or to the minor's estate upon
2 the earlier of the

3 (1) minor's attainment of 21 years of age with respect to property
4 transferred under AS 13.46.030 or 13.46.040 unless the time of transfer of the
5 custodial property to the minor is changed under AS 13.46.195 or 13.46.197;

6 (2) minor's attainment of 18 years of age with respect to property
7 transferred under AS 13.46.050 or 13.46.060, unless the time of transfer of the
8 custodial property to the minor is changed under AS 13.46.197;

9 (3) time specified in the transfer under AS 13.46.080 if the time of
10 transfer of the custodial property to the minor is changed under AS 13.46.195 or
11 13.46.197; or

12 (4) minor's death.

13 * Sec. 34. AS 13.46 is amended by adding a new section to read:

14 **Sec. 13.46.197. Extension of custodial term by custodian.** (a) A custodian
15 may extend the custodial term under this section to an age older than the age that is
16 specified by this chapter or a transferring document made under AS 13.46.080, subject
17 to the right of the minor to compel immediate distribution under (c) of this section.

18 (b) To extend the custodial term under (a) of this section, the custodian shall
19 give the minor written notice of the custodian's intent to extend the custodial term. The
20 notice must specify the duration of the extension by indicating the new custodial term
21 and must inform the minor of the minor's right to compel immediate distribution under
22 (c) of this section. The custodian shall give the notice during the later of the following
23 periods:

24 (1) the six-month period that precedes the last day of the custodial
25 term; or

26 (2) the six-month period that begins on the minor's 18th birthday.

27 (c) Rather than permit the extension of the custodial term, the minor may
28 compel immediate distribution of all or part of the custodial property by giving written
29 notice to the custodian

30 (1) during the six-month period that begins on the day that is the last
31 day of the current custodial term; or

1 (2) within 90 days after receiving the custodian's notice under (b) of
2 this section.

3 (d) If a minor does not exercise the minor's right to compel distribution under
4 (c) of this section, the custodial term shall be extended as indicated in the custodian's
5 notice given under (b) of this section, and the minor may not compel the immediate
6 distribution of custodial property before the end of the custodial term, as extended.

7 (e) A custodian may extend the custodial term more than once under this
8 section.

9 (f) In this section, "custodial term" means the time provided in or allowed by
10 this chapter during which the custodian is directed to hold custodial property until the
11 property is transferred to the minor.

12 * Sec. 35. AS 13.46.990(11) is amended to read:

13 (11) "minor" means an individual who has not attained the age of 18
14 years, except that when used in reference to the beneficiary for whose benefit
15 custodial property is held or to be held, "minor" means an individual who has not
16 attained the age at which the custodian is required under AS 13.46.190, [AND]
17 13.46.195, and 13.46.197 to transfer the custodial property to the beneficiary;

18 * Sec. 36. AS 13 is amended by adding a new chapter to read:

19 **Chapter 75. Disposition of Human Remains.**

20 **Sec. 13.75.010. Directions by decedent.** (a) A person may provide directions
21 for the disposition of the person's remains by placing the directions in a disposition
22 document. The directions may include or be limited to designating an agent to control
23 the disposition of the person's remains.

24 (b) A disposition document must be signed by the person and acknowledged
25 before a notary public, and contain the form and contents required by AS 13.75.030. A
26 disposition document may be a separate document or it may be contained in another
27 document, including a will or prepaid funeral or burial contract. The disposition
28 document may be modified or revoked only by a subsequent disposition document that
29 complies with this subsection.

30 **Sec. 13.75.020. Persons authorized to control disposition.** (a) The following
31 persons, in the priority listed, may control disposition of a decedent's remains:

1 (1) a person designated in a disposition document as the disposition
2 agent for the decedent;

3 (2) a person serving, or nominated by the decedent in the decedent's
4 will to serve, as the personal representative of the decedent's estate, if the person is
5 acting according to the decedent's written instructions contained in the decedent's will;

6 (3) the individual who was the spouse of the decedent at the time of the
7 decedent's death;

8 (4) the sole surviving competent adult child of the decedent, or, if there
9 is more than one surviving competent adult child of the decedent, the majority of the
10 surviving competent adult children; fewer than one-half of the surviving competent
11 adult children may exercise the rights and duties of this section if these surviving adult
12 children use reasonable efforts to notify all other surviving competent adult children
13 that they are exercising these rights and duties and are not aware of any opposition by
14 one-half or more of all of the surviving competent adult children;

15 (5) the surviving competent parents of the decedent; if one of the
16 surviving competent parents is absent, the remaining competent parent may exercise
17 the rights and duties of this section after reasonable efforts have been unsuccessful in
18 locating the absent surviving competent parent; in this paragraph, "absent" means a
19 person who is unable to communicate decisions or participate in making decisions
20 regarding the disposition of a decedent's remains personally, telephonically, or through
21 electronic communication;

22 (6) the surviving competent adult person in the next degrees of
23 kindred, the two surviving competent adult persons of the same degree of kindred if
24 there are two, or, if there are more than two surviving competent adult persons of the
25 same degree of kindred, the majority of those persons; fewer than the majority of
26 surviving competent adult persons of the same degree of kindred may exercise the
27 rights and duties of this section if those persons use reasonable efforts to notify all
28 other surviving competent adult persons of the same degree of kindred that they are
29 exercising these rights and duties and are not aware of any opposition by one-half or
30 more of all surviving competent adult persons of the same degree of kindred;

31 (7) in the case of an indigent or another individual whose final

1 disposition is the responsibility of the state or a municipality, a public administrator,
2 medical examiner, coroner, or another public official charged with arranging the final
3 disposition of the decedent; or

4 (8) another person who is willing to assume legal and financial
5 responsibility.

6 (b) If a person takes control of the disposition under (a) of this section, the
7 person is liable for the reasonable costs of the disposition if the assets of the estate or
8 other available assets are not adequate to pay the costs of the disposition.

9 (c) In this section,

10 (1) "adult" means a person who is 18 years of age or older;

11 (2) "competent" means a person who does not suffer from disabilities
12 that prevent the person from managing the person's property or affairs.

13 **Sec. 13.75.030. Form of disposition document.** A disposition document must
14 be in substantially the following form:

15 **DISPOSITION DOCUMENT**

16 You can select Part 1, Part 2, or both, by completing the part(s)
17 you select, including providing any signatures indicated. Part 3 contains
18 general statements and a place for your signature. You must sign in
19 front of a notary.

20 **PART 1. APPOINTMENT OF AGENT TO CONTROL**
21 **DISPOSITION OF REMAINS.** If you appoint an agent, you and your
22 agent must complete this part as indicated, and the agent must sign this
23 part.

24 I, _____, being of sound mind, wilfully and
25 voluntarily make known my desire that, on my death, the disposition of
26 my remains shall be controlled by _____ (name of agent first
27 named below), and, with respect to that subject only, I appoint that
28 person as my agent. All decisions made by my agent with respect to the
29 disposition of my remains, including cremation, are binding.

30 **ACCEPTANCE BY AGENT OF APPOINTMENT.**

31 **THE AGENT, AND EACH SUCCESSOR AGENT, BY**

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ACCEPTING THIS APPOINTMENT, AGREES TO AND ASSUMES THE OBLIGATIONS PROVIDED IN THIS DOCUMENT. AN AGENT MAY SIGN AT ANY TIME, BUT AN AGENT'S AUTHORITY TO ACT IS NOT EFFECTIVE UNTIL THE AGENT SIGNS BELOW TO INDICATE THE ACCEPTANCE OF APPOINTMENT. ANY NUMBER OF AGENTS MAY SIGN, BUT ONLY THE SIGNATURE OF THE AGENT ACTING AT ANY TIME IS REQUIRED.

AGENT:

Name: _____

Address: _____

Telephone Number: _____

Signature Indicating Acceptance of Appointment:

Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

(1) First Successor

Name: _____

Address: _____

Telephone Number: _____

Signature of First Successor Indicating Acceptance of Appointment:

Date of Signature: _____

(2) Second Successor

Name: _____

Address: _____

Telephone Number: _____

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Signature of Second Successor Indicating Acceptance of Appointment:

Date of Signature: _____

PART 2. DIRECTIONS FOR THE DISPOSITION OF MY REMAINS.

Stated below are my directions for the disposition of my remains:

If the disposition of my remains is by cremation, then (pick one):

I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors consider a change to be appropriate.

I wish to allow only the survivors I have designated below to have the option of canceling my cremation and selecting alternative arrangements, if they consider that a change to be appropriate:

PART 3. GENERAL PROVISIONS AND SIGNATURE.

WHEN DIRECTIONS BECOME EFFECTIVE. The directions, including any appointment of an agent, in this disposition document become effective on my death.

REVOCATION OF PRIOR APPOINTMENTS. I revoke any prior appointment of any person to control the disposition of my remains.

SIGNATURE OF PERSON MAKING DISPOSITION DOCUMENT

Signature: _____

Date of signature: _____

1 (Notary acknowledgment of signature)

2 **Sec. 13.75.040. Agent's appointment.** The person appointed as an agent in a
3 disposition document may sign the disposition document at any time, but the agent's
4 authority to act is not effective until the agent signs the instrument.

5 **Sec. 13.75.050. Exercise of authority.** If a person fails to exercise the person's
6 authority to control disposition under AS 13.75.020 within 48 hours after receiving
7 notification of the decedent's death or within 48 hours after the decedent's death,
8 whichever is earlier, the person may not control the disposition of the decedent's
9 remains, and the right to control the disposition of the decedent's remains passes to the
10 person who is next listed in priority under AS 13.75.020. If the person to whom the
11 right to control the disposition passes under this section fails to exercise the person's
12 authority to control the disposition within 48 hours after being notified that the
13 authority to control the disposition has passed to the person, the authority to control
14 the disposition passes to the person who is next listed in priority under AS 13.75.020.

15 **Sec. 13.75.060. Certain persons prohibited from control.** If a person is
16 charged with a felonious killing in connection with a decedent's death and if the
17 funeral director or the cemetery knows about the charge, then the person may not
18 control disposition, and the right to control disposition passes to the person who is
19 next listed in priority under AS 13.75.020.

20 **Sec. 13.75.070. Prohibition of cremation; written instructions.** A person
21 may not authorize cremation for a decedent's remains if a decedent has left directions
22 in a disposition document that the decedent does not wish to be cremated.

23 **Sec. 13.75.080. Implementation of directions.** (a) The person authorized to
24 control the disposition shall carry out the directions of the decedent to the extent that
25 the decedent's estate or the person is financially able to carry out the directions.

26 (b) Notwithstanding any other provision in AS 13.06 - 13.36 (Uniform
27 Probate Code), if a person provides directions in a disposition document that is
28 contained in a will, the directions shall be carried out immediately without the
29 necessity of probate. If the will is not probated or is declared invalid for testamentary
30 purposes, the directions are valid to the extent to which they have been acted on in
31 good faith.

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Sec. 13.75.090. Misrepresentation; liability. If a person represents that the person knows the identity of a decedent, and, with the intent to procure the disposition of the decedent's remains, signs a statement, other than a death certificate, that identifies the decedent, the person guarantees the identity of the decedent and is liable for any damages that result, directly or indirectly, from that guarantee.

Sec. 13.75.100. Liability. (a) A disposition organization is not liable for carrying out the directions of a decedent if the disposition organization carries out the directions of a decedent or a person who establishes that the person is entitled to control the disposition.

(b) This section may not be construed to reduce or eliminate the liability of a disposition organization for its negligence or reckless acts.

Sec. 13.75.110. Disputes. (a) A person listed in AS 13.75.020 who is involved in a dispute with one or more persons listed in AS 13.75.020 about which of the persons has the authority to control disposition may bring an action in the superior court to resolve the dispute.

(b) If there is a dispute with one or more persons listed in AS 13.75.020 about which person has the authority to control disposition, a cemetery organization or funeral establishment is not liable for refusing to accept, to inter, or otherwise to dispose of the decedent's remains until the cemetery organization or funeral establishment receives a court order or another suitable confirmation that the dispute has been resolved.

Sec. 13.75.120. Exemptions. The disposition of the remains of a member of the organized militia under AS 26.05.262, the disposition of the remains of a member of the armed forces under AS 26.10.065(a), and the disposition of the remains of a member of the United States Coast Guard under AS 26.10.065(b) are exempt from this chapter.

Sec. 13.75.190. Definitions. In this chapter,

- (1) "control" means the authority to control disposition;
- (2) "directions" means
 - (A) instructions for the disposition of a person's remains;
 - (B) the appointment of an agent to handle the disposition of a

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1 person's remains; or

2 (C) both (A) and (B) of this paragraph;

3 (3) "disposition" means disposition of a decedent's remains, including
4 cremation, but does not include an anatomical gift; in this paragraph, "anatomical gift"
5 has the meaning given in AS 13.52.390;

6 (4) "disposition document" means a disposition document authorized
7 by AS 13.75.010

8 (A) in which a person provides directions regarding the
9 disposition of the person's remains; and

10 (B) that complies with AS 13.75.030;

11 (5) "disposition organization" means

12 (A) a cemetery association formed under AS 10.30.010;

13 (B) a nonprofit cemetery corporation authorized by
14 AS 10.30.055;

15 (C) a person operating a crematory;

16 (D) a person operating a columbarium;

17 (E) a funeral home or other type of funeral establishment;

18 (F) a funeral director or an embalmer.

19 **Sec. 13.75.195. Short title.** This chapter may be cited as the Disposition of
20 Human Remains Act.

21 * **Sec. 37.** AS 21.09.210(m) is amended to read:

22 (m) The tax imposed under this section for a single [AN INDIVIDUAL] life
23 insurance policy or for a group or other type of policy that insures the life of one
24 or more individuals shall be computed at the rate of

25 (1) 2.7 percent of policy year premium up to \$100,000; and

26 (2) one-tenth of one percent of policy year premium exceeding
27 \$100,000.

28 * **Sec. 38.** AS 21.42.020 is amended by adding new subsections to read:

29 (e) Notwithstanding (a) of this section, a trustee, acting in a fiduciary capacity,
30 may procure or cause to be procured an insurance contract that is on the life or body of
31 an individual and under which the proceeds of the insurance contract are payable to

1 the trustee, acting in a fiduciary capacity, if

2 (1) the trustee, acting in a fiduciary capacity, owns the insurance
3 contract or the trust itself owns the insurance contract;

4 (2) on the date the contract is made, a settlor of the trust is the
5 individual insured, has an insurable interest in the individual insured, or would have
6 had an insurable interest in the individual insured if the settlor were living at the time
7 the contract was made; in this paragraph, "settlor" means a person, including a person
8 for whom a fiduciary or agent is acting, who executes the trust instrument; and

9 (3) the proceeds of the contract are primarily for the benefit of a trust
10 beneficiary who has an insurable interest in the individual insured, except that, if the
11 determination of the trust beneficiary's insurable interest is based on (d)(1) of this
12 section, the trust beneficiary's relation by blood or law must be within the third degree.

13 (f) A person who has an insurable interest in the life or body of an individual
14 may form a business firm that is substantially or solely for the purpose of purchasing,
15 holding, or administering an insurance contract on the life or body of the individual. In
16 this subsection, "firm" has the meaning given in AS 21.97.900, but also includes a
17 business trust and a joint venture.

18 * Sec. 39. AS 32.11.340(b) is amended to read:

19 (b) This section provides the exclusive remedy that a judgment creditor of a
20 general or limited partner or of the general or limited partner's assignee may use to
21 satisfy a judgment out of the judgment debtor's interest in the partnership. Other legal
22 or equitable remedies, including foreclosure on the general or limited partner's
23 partnership interest and a court order for directions, accounts, and inquiries that the
24 debtor general or limited partner might have made, are not available to the judgment
25 creditor attempting to satisfy the judgment out of the judgment debtor's interest in the
26 limited partnership and may not be ordered by a court.

27 * Sec. 40. AS 34.40.110(b) is amended to read:

28 (b) If a trust contains a transfer restriction allowed under (a) of this section,
29 the transfer restriction prevents a creditor existing when the trust is created or a person
30 who subsequently becomes a creditor from satisfying a claim out of the beneficiary's
31 interest in the trust, unless the creditor is a creditor of the settlor and

1 (1) the creditor establishes by clear and convincing evidence that the
2 settlor's transfer of property in trust was made with the intent to defraud that creditor,
3 and a cause of action or claim for relief with respect to the fraudulent transfer
4 complies with the requirements of (d) of this section; however, a settlor's expressed
5 intention to protect trust assets from a beneficiary's potential future creditors is not
6 evidence of an intent to defraud;

7 (2) the trust, except for an eligible individual retirement account trust,
8 provides that the settlor may revoke or terminate all or part of the trust without the
9 consent of a person who has a substantial beneficial interest in the trust and the interest
10 would be adversely affected by the exercise of the power held by the settlor to revoke
11 or terminate all or part of the trust; in this paragraph, "revoke or terminate" does not
12 include a power to veto a distribution from the trust, a testamentary or lifetime
13 nongeneral power of appointment or similar power, or a right to receive a distribution
14 of income or principal under (3)(A), (B), (C), or (D) of this subsection;

15 (3) the trust, except for an eligible individual retirement account trust,
16 requires that all or a part of the trust's income or principal, or both, must be distributed
17 to the settlor; however, this paragraph does not apply to a settlor's right to receive the
18 following types of distributions, which remain subject to the restriction provided by
19 (a) of this section until the distributions occur:

20 (A) income or principal from a charitable remainder annuity
21 trust or charitable remainder unitrust; in this subparagraph, "charitable
22 remainder annuity trust" and "charitable remainder unitrust" have the meanings
23 given in 26 U.S.C. 664 (Internal Revenue Code) [AS THAT SECTION
24 READS ON OCTOBER 8, 2003,] and as it may be amended;

25 (B) a percentage of the value of the trust each year as
26 determined from time to time under the trust instrument, but not exceeding the
27 amount that may be defined as income under AS 13.38 or under 26 U.S.C.
28 643(b) (Internal Revenue Code) [AS THAT SUBSECTION READS ON
29 OCTOBER 8, 2003,] and as it may be amended;

30 (C) the transferor's potential or actual use of real property held
31 under a qualified personal residence trust within the meaning of 26 U.S.C.

1 2702(c) (Internal Revenue Code) [AS THAT SUBSECTION READS ON
2 SEPTEMBER 15, 2004,] or as it may be amended in the future; or

3 (D) income or principal from a grantor retained annuity trust or
4 grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal
5 Revenue Code) [AS THAT SECTION READS ON SEPTEMBER 15, 2004,]
6 or as it may be amended in the future; or

7 (4) at the time of the transfer, the settlor is in default by 30 or more
8 days of making a payment due under a child support judgment or order.

9 * Sec. 41. AS 34.40.110(d) is amended to read:

10 (d) A cause of action or claim for relief with respect to a fraudulent transfer of
11 a settlor's assets under (b)(1) of this section is extinguished unless the action under
12 (b)(1) of this section is brought by a creditor of the settlor who

13 (1) is a creditor of the settlor before the settlor's assets are transferred
14 to the trust, and the action under (b)(1) of this section is brought within the later of

15 (A) two [FOUR] years after the transfer is made; or

16 (B) six months [ONE YEAR] after the transfer is or reasonably
17 could have been discovered by the creditor if the creditor

18 (i) can demonstrate, by a preponderance of the
19 evidence, that the creditor asserted a specific claim against the settlor
20 before the transfer; or

21 (ii) files another action, other than an action under
22 (b)(1) of this section, against the settlor that asserts a claim based on an
23 act or omission of the settlor that occurred before the transfer, and the
24 action described in this sub-subparagraph is filed within two [FOUR]
25 years after the transfer; or

26 (2) becomes a creditor subsequent to the transfer into trust, and the
27 action under (b)(1) of this section is brought within two [FOUR] years after the
28 transfer is made.

29 * Sec. 42. AS 34.40 is amended by adding new sections to read:

30 Sec. 34.40.113. Discretionary interests in irrevocable trusts. (a) This section
31 applies to a creditor's claim with respect to a discretionary interest in an irrevocable

1 trust, unless the trust instrument provides otherwise.

2 (b) A discretionary interest in an irrevocable trust is not a property interest or
3 an enforceable right. It is an expectancy that a creditor of a beneficiary may not attach
4 or otherwise reach.

5 (c) A creditor of a beneficiary may not force a distribution with regard to a
6 discretionary interest in an irrevocable trust. A creditor may not compel a trustee to
7 exercise the trustee's discretion to make a distribution with regard to a discretionary
8 interest in an irrevocable trust.

9 (d) Even if a beneficiary has an outstanding creditor, in the case of a
10 discretionary interest in an irrevocable trust, a trustee who has the authority to pay
11 income or principal to a beneficiary may pay it to a third party if the payment is for the
12 benefit of the beneficiary. A trustee is not liable to a creditor for paying income or
13 principal on behalf of the beneficiary.

14 (e) A creditor of a beneficiary may not maintain an action or a proceeding in
15 court that interferes with the trustee's discretion to apply income or principal on behalf
16 of the beneficiary.

17 (f) A creditor of a beneficiary may not obtain an order of attachment or similar
18 relief that would prevent a trustee from making a discretionary payment to a third
19 party on behalf of the beneficiary.

20 (g) This section does not prevent a creditor from obtaining relief from a
21 fraudulent transfer under AS 34.40.110.

22 (h) In this section, a beneficiary's entitlement to a distribution is within the
23 discretion of a trustee, whether or not the trust instrument states the purposes for the
24 distribution or uses "may," "shall," "sole and absolute," "uncontrolled," or similar
25 words.

26 (i) In this section, "discretionary interest" means a beneficiary's interest in an
27 irrevocable trust if the beneficiary's entitlement to a distribution is within the
28 discretion of the trustee.

29 **Sec. 34.40.118. Transfers of individual retirement accounts.** (a)
30 Notwithstanding a provision in AS 09.38.017(d), AS 34.40.110, or another law to the
31 contrary, a person may voluntarily transfer or assign the person's interest in an

1 individual retirement account if the person

2 (1) is the owner of or a participant in the individual retirement account;

3 or

4 (2) acquired the interest as a result of the death of another individual.

5 (b) In this section, "individual retirement account" means an individual
6 retirement account established under 26 U.S.C. 408 or a Roth IRA established under
7 26 U.S.C. 408A.

8 * Sec. 43. AS 34.77.030(g) is amended to read:

9 (g) Whether or not the community property agreement provides that all
10 property acquired by either or both spouses during the marriage is community
11 property, and except to the extent otherwise expressly provided by the spouses in the
12 community property agreement or by the settlors in a community property trust,
13 property acquired by a spouse during marriage and after the determination date is
14 individual property if acquired

15 (1) by gift or a disposition at death made by a third person to the
16 spouse and not to both spouses;

17 (2) in exchange for or with the proceeds of other individual property of
18 the spouse;

19 (3) from appreciation or income of the spouse's individual property
20 except to the extent that the income or appreciation is classified as community
21 property under AS 34.77.130;

22 (4) by a decree, community property agreement, written consent, or
23 reclassification under AS 34.77.060(b) designating it as the individual property of the
24 spouse;

25 (5) as a recovery for damage to property under AS 34.77.140, except
26 as specifically provided otherwise in a decree, community property agreement,
27 community property trust, or written consent; [OR]

28 (6) as a recovery for personal injury, except for the amount of the
29 recovery attributable to expenses paid or otherwise satisfied from community
30 property; or

31 (7) as a transfer to a community property trust and declared by

1 the trust to be the individual property of the spouse.

2 * Sec. 44. AS 34.77.050(b) is amended to read:

3 (b) A gift of community property to a third person that is not allowed under
4 (a) of this section is subject to AS 34.77.140(e) - (h) [(d) OF THIS SECTION] unless
5 both spouses act together in making the gift or the other spouse ratifies the gift.

6 * Sec. 45. AS 34.77.110 is amended by adding new subsections to read:

7 (f) Property that spouses agree in a community property agreement is
8 community property or property that is transferred to a community property trust and
9 expressly declared by the trust to be community property is owned as community
10 property regardless of the form of title to the property, even if the title indicates that
11 the property is owned unequally by the spouses or is only in the name of one spouse.

12 (g) If the title to community property is in a form that provides for ownership
13 by survivorship between the spouses, then ownership by survivorship is presumed to
14 have been made with the consent of both spouses.

15 (h) If a spouse with management and control of community property
16 designates a beneficiary for the property on the death of one or both of the spouses,
17 and if the community property is held in a form of title that permits a beneficiary
18 designation, the beneficiary designation is effective only for the designating spouse's
19 one-half interest in the community property unless the other spouse consents in
20 writing to the designation. A designation of the following as the beneficiary is
21 presumed to have been made with the consent of the other spouse:

22 (1) the other spouse or an ancestor or descendant of either spouse;

23 (2) a charity; or

24 (3) a trust, to the extent that the beneficiaries consist of persons or
25 entities identified in (1) or (2) of this subsection.

26 (i) The testimony of one spouse is sufficient to rebut a presumption
27 established under this section.

28 (j) A disposition of community property contrary to (e) - (h) of this section is
29 voidable. An action in court to void the disposition must be commenced within the
30 time specified by AS 34.77.140(e).

31 * Sec. 46. AS 34.77.140(d) is amended to read:

1 (d) Except as provided otherwise in (e) - (h) of this section
2 [AS 34.77.050(d)], a spouse must begin an action against the other spouse under (a) of
3 this section within three years after acquiring actual knowledge of the facts giving rise
4 to the claim.

5 * Sec. 47. AS 34.77.140 is amended by adding new subsections to read:

6 (e) Except as provided by (f) - (h) of this section, if a gift of community
7 property during marriage by a spouse does not comply with AS 34.77.050(a), the
8 nondonor spouse may bring an action to recover the property or the amount of money
9 by which the gift exceeded the limit under AS 34.77.050(a). The nondonor spouse
10 may bring the action against the donor spouse, the gift recipient, or both. The
11 nondonor spouse must commence the action within the earliest of the following times:

12 (1) one year after the nondonor spouse receives notice of the gift;

13 (2) one year after dissolution of the marriage; or

14 (3) on or before the deadline for filing a claim under AS 13.16.460
15 after the death of the donor spouse.

16 (f) If a recovery under (e) of this section occurs during the marriage of the
17 donor spouse and the nondonor spouse, the property or money that is recovered is
18 considered community property. If the recovery occurs after the dissolution of the
19 marriage of the donor and nondonor spouses or after the death of either the donor or
20 the nondonor spouse, the recovery is limited to 50 percent of the property or money
21 that would have been recovered if the recovery had occurred during the marriage.

22 (g) If a transfer of community property to a third person during marriage by a
23 spouse acting without the other spouse becomes a completed gift on the death of the
24 donor spouse, or if an arrangement involving community property during marriage by
25 a spouse acting without the other spouse is intended to be and becomes a gift to a third
26 person on the death of the donor spouse, the surviving spouse may bring an action in
27 court against the gift recipient to recover one-half of the gift. To bring an action under
28 this subsection, the surviving spouse must commence the action on or before the
29 deadline for filing a claim under AS 13.16.460.

30 (h) If a spouse who would have been entitled to bring an action under (e) - (g)
31 of this section predeceases the donor spouse, the deceased spouse's successor in

1 interest may bring an action for recovery under (e) - (g) of this section, but the action
2 must be commenced within one year after the deceased spouse's death. Recovery in an
3 action under this subsection is the same as if the donor spouse had predeceased the
4 spouse entitled to the recovery, but the amount of the recovery is calculated as of the
5 date of the death of the spouse entitled to the recovery.

6 * Sec. 48. AS 13.38.330(c); AS 34.77.050(d), and 34.77.110(d) are repealed.

7 * Sec. 49. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **INDIRECT COURT RULE AMENDMENTS.** (a) AS 34.40.113(f), enacted by sec. 42
10 of this Act, has the effect of amending Rule 64, Alaska Rules of Civil Procedure, by
11 prohibiting a creditor or beneficiary from obtaining an order of attachment or similar relief in
12 certain cases.

13 (b) AS 34.77.110(i), enacted by sec. 45 of this Act, has the effect of amending Rule
14 301(a), Alaska Rules of Evidence, by specifying the evidence that is sufficient to rebut a
15 presumption under AS 34.77.110(i), enacted by sec. 45 of this Act.

16 * Sec. 50. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **APPLICABILITY.** (a) AS 09.38.017(a), as amended by sec. 1 of this Act,
19 AS 09.38.017(d), as amended by sec. 2 of this Act, and AS 09.38.017(e), as amended by sec.
20 3 of this Act, apply to a retirement plan that exists before, on, or after the effective date of this
21 Act. In this section, "retirement plan" has the meaning given in AS 09.38.017(e), as amended
22 by sec. 3 of this Act.

23 (b) AS 13.36.157, as repealed and reenacted by sec. 9 of this Act, AS 13.36.158 and
24 13.36.159, enacted by sec. 10 of this Act, AS 13.36.072(c), enacted by sec. 8 of this Act,
25 AS 13.36.215(b), enacted by sec. 11 of this Act, AS 13.36.225(a), as amended by sec. 12 of
26 this Act, AS 13.36.273, enacted by sec. 13 of this Act, AS 13.36.370(a), as amended by sec.
27 14 of this Act, and AS 13.36.375(c), enacted by sec. 15 of this Act, apply to a trust that exists
28 before, on, or after the effective date of this Act.

29 (c) AS 13.46.190, as amended by sec. 33 of this Act, AS 13.46.197, enacted by sec.
30 34 of this Act, and AS 13.46.990(11), as amended by sec. 35 of this Act, apply to a transfer
31 that is made before, on, or after the effective date of this Act. In this section, "transfer" has the

1 meaning given in AS 13.46.990.

2 (d) AS 34.40.118, enacted by sec. 42 of this Act, applies to an individual retirement
3 account that exists before, on, or after the effective date of this Act. In this section, "individual
4 retirement account" means an individual retirement account established under 26 U.S.C. 408
5 or a Roth IRA established under 26 U.S.C. 408A.

6 * Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 **CONDITIONAL EFFECT.** (a) AS 34.40.113(f), enacted by sec. 42 of this Act, takes
9 effect only if sec. 49(a) of this Act receives the two-thirds majority vote of each house
10 required by art. IV, sec. 15, Constitution of the State of Alaska.

11 (b) AS 34.77.110(i), enacted by sec. 45 of this Act, takes effect only if sec. 49(b) of
12 this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
13 Constitution of the State of Alaska.